

**United States Department of Labor
Employees' Compensation Appeals Board**

_____)	
T.O., Appellant)	
)	
and)	Docket No. 21-1241
)	Issued: June 7, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
Chicago, IL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On August 16, 2021 appellant filed a timely appeal from a July 23, 2021 merit decision and an August 10, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1241.

On February 19, 2021 appellant, then a 58-year-old general biological scientist, filed a traumatic injury claim (Form CA-1) alleging that on February 1, 2021 he contracted COVID-19 while in the performance of duty. He noted that he worked in close contact with coworkers who also tested positive for COVID-19 around the same time. Appellant stopped work on February 1, 2021 and returned on February 11, 2021.

A report dated February 1, 2021 indicated that appellant had tested positive for COVID-19. The report did not identify the type of test performed.

On March 16, 2021 OWCP advised appellant that it was reviewing his case under the provisions of the newly passed American Rescue Plan Act (ARPA) of 2021.¹

¹ Public Law 117-2 (March 11, 2021).

By decision dated July 23, 2021, OWCP denied appellant's traumatic injury claim. It found that the medical evidence of record was insufficient to establish he sustained COVID-19 causally related to the accepted employment exposure.

Thereafter, OWCP received a duplicate of the previously-submitted test result from February 1, 2021, which did not identify the type of COVID-19 test performed.

On August 3, 2021 appellant requested reconsideration. In support of his request, he submitted a February 3, 2021 laboratory report, which indicated that he had tested positive for COVID-19 on a Polymerase Chain Reaction (PCR) test.

By decision dated August 10, 2021, OWCP denied appellant's request for reconsideration as he had not submitted evidence or raised an argument sufficient to warrant reopening his claim for merit review under 5 U.S.C. § 8128(a). It found that the only evidence submitted was the previously-considered February 1, 2021 test result.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act (FECA)² has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA,³ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

Under section 4016 of ARPA any claim made for COVID-19 by or on behalf of a "covered employee" for benefits under FECA will be deemed to have an injury proximately caused by exposure to COVID-19 arising out of the nature of the covered employee's employment. A "covered employee" is defined by ARPA as an employee under 5 U.S.C. § 8101(a) and employed in the federal service at any time during the period beginning on January 27, 2020 and ending on January 27, 2023. A "covered employee" prior to a diagnosis of COVID-19 must have carried out

² 5 U.S.C § 8101 *et seq.*

³ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁵ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

duties that required a physical interaction with at least one other person (a patient, member of the public, or a coworker); or was otherwise subject to a risk of exposure to COVID-19.⁶

Exposure to COVID-19 alone is not sufficient to establish a work-related medical condition. Manifestation of COVID-19 must occur within 21 days of the covered exposure.⁷ To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive PCR or Antigen COVID-19 test result; (2) a positive Antibody test result, together with contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician (a notice to quarantine is not sufficient if there was no evidence of illness); or (3) if no positive laboratory test is available, a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available. Self-administered COVID-19 testing is insufficient to establish a diagnosis of COVID-19 under FECA unless the administration of the self-test is monitored by a medical professional and the results are verified through documentation submitted by such professional.⁸

Paragraph 2 of FECA Bulletin No. 21-10 provides, *inter alia*, “The FECA program will review all COVID-19 claims previously denied in accordance with the guidance provided in FECA Bulletin No. 21-09 based on the submission of an antigen test without contemporaneous medical to determine if the claim can now be accepted. This will occur without a request from the claimant. If the FECA program determines that the case can now be accepted under the ARPA, the case will be reopened under the Director’s own motion under Section 8128(a) of the FECA, and the case will be accepted. If this occurs, the claimant and employing agency will be notified.”

In light of the above-noted amendments, OWCP did not take into consideration all of the applicable criteria for establishing a diagnosis of COVID-19 when it denied appellant’s claim. This case shall therefore be remanded for consideration and application of FECA Bulletin Nos. 21-09, 21-10, and 22-06 with regard to appellant’s claim for COVID-19.⁹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁰ Accordingly,

⁶ ARPA, *supra* note 2.; FECA Bulletin No. 21-09 (issued April 28, 2021).

⁷ FECA Bulletin No. 21-09 (issued April 28, 2021).

⁸ FECA Bulletin Nos. 21-09 (issued April 28, 2021), 21-10 (issued August 17, 2021), and 22-06 (issued February 16, 2022). FECA Bulletin No. 21-10 amended FECA Bulletin No. 21-09 in part to allow for a positive Antigen COVID-19 test result. FECA Bulletin No. 22-06 amended FECA Bulletin Nos. 21-09 and 21-10 to update COVID-19 claims processing guidelines relating to reinfection and home tests.

⁹ See e.g., *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022), *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022) (the Board remanded these cases for proper application of FECA Bulletin No. 21-09).

¹⁰ In light of the Board’s disposition regarding the merit issue, the nonmerit issue is rendered moot.

IT IS HEREBY ORDERED THAT the July 23, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board. The August 10, 2021 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 7, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board