

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

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| P.I., Appellant |) | |
| |) | |
| and |) | Docket No. 21-1268 |
| |) | Issued: June 6, 2023 |
| DEPARTMENT OF VETERANS AFFAIRS, |) | |
| LYONS VA MEDICAL CENTER, Lyons, NJ, |) | |
| Employer |) | |
| |) | |

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 20, 2021 appellant filed a timely appeal from an August 12, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1268.

On May 19, 2020 appellant, then a 52-year-old licensed practical nurse, submitted an occupational disease claim (Form CA-2) alleging that on April 4, 2020 he was continuously exposed to and contracted COVID-19 due to exposure to COVID-19 positive patients in his unit. He noted that he experienced tiredness, severe body aches and chills, and he was transported to an urgent care center on April 4, 2020. On the reverse side of the claim form, appellant's supervisor indicated that he stopped work on April 4, 2020 and returned on April 20, 2020.

In support of his claim, appellant submitted a letter dated April 4, 2020 from Dr. Elena Vega, an osteopath specializing in general surgery, which indicated that he was seen for a medical concern and excused him from work until April 12, 2020.

In an attending physician's report (Form CA-20) dated June 11, 2020, Dr. Kafilat Adewunmi, an osteopath Board-certified in family practice and osteopathic manipulative treatment, noted that appellant related a history of COVID-19 illness/symptoms with exposure at work. She noted a diagnosis of "exposure to COVID-19." Dr. Adewunmi also noted findings that appellant had contact with patients and presenting symptoms. She indicated by check mark that

his condition resulted from an employment activity and noted that he was employed as a nurse “caring for patients with viral illness.”

On June 20, 2020 Dr. Adewunmi completed an employing establishment work capacity form in which she noted clinical findings of “generalized signs and symptoms of viral illness contact with COVID-19 illness.” She indicated that appellant could return to work.

By decision dated February 25, 2021, OWCP denied appellant’s claim as he failed to provide copies of COVID-19 testing results or a statement from a doctor indicating that he tested positive for COVID-19. It concluded, therefore, that the requirements had not been met to establish an injury as defined by the Federal Employees’ Compensation Act (FECA).¹

On March 4, 2021 appellant timely requested a telephonic hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on June 3, 2021.

Subsequent to the hearing, appellant submitted a letter dated June 4, 2021 from Charisse Smith, a physician assistant, which stated that he was seen in urgent care on April 4, 2020 for possible coronavirus exposure and was not tested likely due to a shortage of tests available at that time.

In a note dated June 10, 2021, Dr. Adewunmi stated that appellant was seen for COVID-19 symptoms on April 7, 2020 but was not tested at the time.

By decision dated August 12, 2021, OWCP’s hearing representative affirmed the February 25, 2021 decision.

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

An employee seeking benefits under FECA² 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

¹ 5 U.S.C. § 8101 *et seq.*

² *Id.*

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).

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021⁶ 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 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-19.⁷

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.⁸ To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive Polymerase Chain Reaction (PCR) or Antigen COVID-19 test result; or (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.⁹

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 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-19.¹⁰ Following this and

⁶ Public Law 117-2 (March 11, 2021).

⁷ ARPA, *id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

⁸ FECA Bulletin No. 21-09 (issued April 28, 2021).

⁹ 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.

¹⁰ 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 for proper application of FECA Bulletin No. 21-09).

other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 12, 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.

Issued: June 6, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board