

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

L.J., Appellant)	
)	
and)	Docket No. 22-0803
)	Issued: June 7, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
EDWARD HINES, JR., VA HOSPITAL,)	
Hines, IL, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 4, 2022 appellant filed a timely appeal from a January 19, 2022 merit decision and a March 17, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0803.

On December 1, 2021 appellant, then a 56-year-old personnel clerk and assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2021 he was exposed to and contracted COVID-19 from coworkers. He explained that when he came into work on November 4, 2021 he went to the Employee Health Clinic to be tested for COVID. When he related that he was experiencing COVID symptoms appellant was told to leave the employing establishment premises. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty and indicated that he stopped work on November 4, 2021.

OWCP received a November 29, 2021 note from Dr. Akef Abu-Rmaileh, an attending internist, who advised that appellant had COVID-19 as of November 6, 2021 and he still had symptoms. Dr. Abu-Rmaileh requested that appellant be excused from work through December 13, 2021.

An unsigned November 8, 2021 letter from a medical facility indicated that appellant's COVID-19 test was positive.

By decision dated January 19, 2022, OWCP accepted that the November 3, 2021 employment exposure occurred as alleged, but denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis of 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

OWCP subsequently received additional medical evidence, including a November 5, 2021 Polymerase Chain Reaction (PCR) COVID-19 test which revealed that appellant was positive.

Dr. Abu-Rmaileh, in a progress note dated November 29, 2021, provided examination findings. Additionally, he provided an assessment of persistent COVID-19 symptoms, mainly cough, dyspnea, and dizziness. Dr. Abu-Rmaileh requested that appellant be excused from work until December 13, 2021.

By appeal request form dated January 21, 2022 and postmarked on February 22, 2022, appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review regarding the January 19, 2022 decision.

OWCP, by decision dated March 17, 2022, denied appellant's request for review of the written record as untimely filed, finding that his request was not made within 30 days of the January 19, 2022 OWCP decision as it was postmarked on February 22, 2022. It further exercised its discretion and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

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

An employee seeking benefits under FECA 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,² 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.³ 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.⁴

¹ 5 U.S.C § 8101 *et seq.*

² *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).

³ *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).

⁴ *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 2021⁵ 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-19.⁶

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; 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.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.

⁵ Public Law 117-2 (March 11, 2021).

⁶ ARPA, *id.*; 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.

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,

IT IS HEREBY ORDERED THAT the January 19, 2022 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board. The March 17, 2022 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 7, 2023
Washington, DC

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

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

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

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.