

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

S.J., Appellant)	
)	
and)	Docket No. 22-0925
)	Issued: June 27, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Millington, MD, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 23, 2022 appellant filed a timely appeal from a March 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosis of COVID-19.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that a appellant submitted additional evidence following the March 23, 2022 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 21, 2022 appellant, then a 39-year-old office clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2021 she contracted COVID-19 after she was exposed to the general public and coworkers while in the performance of duty. She related that she tested positive for COVID-19 on December 30, 2021. Appellant stopped work on December 28, 2021. The employing establishment controverted the claim.

In support of her claim, appellant submitted a January 3, 2022 form letter from the Maryland Department of Health, which indicated that appellant was “**obligated to isolate due to testing positive for the COVID-19 virus or reporting COVID-like symptoms.**” (Emphasis in the original.) The letter further indicated that appellant must stay at home and not go to work or school outside the home for at least 10 days from the initial onset of symptoms (or the date tested for the virus in asymptomatic cases). It also noted that she could end her isolation no sooner than January 7, 2022, and return to work no sooner than January 8, 2022.

In a development letter dated February 2 and 16, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to provide the necessary evidence.

By decision dated March 23, 2022, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish a diagnosis of COVID-19. Therefore, the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

³ *Id.*

⁴ *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).

⁵ *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).

⁶ *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 2021⁷ 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-19.⁸

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. 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 laboratory test result is not available. Self-administered COVID-19 tests, also called “home tests,” “at-home tests,” or “over-the-counter (OTC) tests” are 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

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19.

Appellant filed a claim on January 21, 2022, alleging that she had developed COVID-19 within 21 days of her exposure while in the performance of duty.¹⁰ In support of her claim, appellant submitted a form letter from the Maryland Department of Health, which indicated that appellant was “**obligated to isolate due to testing positive for the COVID-19 virus or reporting COVID-like symptoms.**” (Emphasis in the original.) As noted above, OWCP’s guidance requires that if no positive laboratory test is available, appellant must submit a COVID-19 diagnosis from a physician together with rationalized medical opinion supporting the diagnosis

⁷ Public Law 117-2 (March 11, 2021).

⁸ ARPA, *id.*; 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 *Id.*

and an explanation as to why a positive laboratory test result is not available.¹¹ The form letter from the Maryland Department of Health did not provide a rationalized explanation from a physician that appellant had been diagnosed with COVID-19 along with an explanation as to why a positive laboratory test result was not available. Therefore, this evidence is insufficient to establish a diagnosis of COVID-19.¹²

As the medical evidence of record is insufficient to establish a diagnosis of COVID-19, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosis of COVID-19.

¹¹ *Id.*

¹² *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 27, 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