



performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on April 15, 2022 and returned to work on May 2, 2022.

Accompanying the claim was a photograph of a COVID-19 home test.

In a May 6, 2022 report, Dr. Allison Waggoner, an osteopathic physician specializing in family medicine, noted that appellant was seen *via* a telehealth visit on April 20, 2022 and was diagnosed with and treated for COVID-19.

In development letters dated May 20 and 31, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and afforded him 30 days to submit the necessary evidence.

On June 17, 2022 OWCP explained to appellant that the COVID-19 home test submitted was insufficient because it was not monitored by a health care professional.

By decision dated July 1, 2022, OWCP denied appellant's claim. It found 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.

On July 25, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated November 16, 2022, OWCP's hearing representative affirmed the May 27, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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 2021<sup>6</sup> 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.<sup>7</sup>

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 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 laboratory test result is not available. Self-administered COVID-19 tests, also called “home tests,” “at-home tests,” or “over-the-counter 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.<sup>8</sup>

### ANALYSIS

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

Appellant filed a claim on May 9, 2022 alleging that he had developed COVID-19 within 21 days of his exposure while in the performance of duty.<sup>9</sup> In support of his claim, he submitted a photograph of a home test for COVID-19. However, this case record does not indicate that the home test was monitored by a health care professional. As noted, OWCP’s guidance provides that a home test is insufficient to establish a diagnosis of COVID-19, unless the home test is monitored by a health care professional and the results are verified through documentation submitted by such

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<sup>6</sup> Public Law 117-2 (March 11, 2021).

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

<sup>8</sup> 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.

<sup>9</sup> *Id.*

professional.<sup>10</sup> The Board, therefore, finds that the photograph of the home test is insufficient to establish a diagnosis of COVID-19.

Appellant also submitted a May 6, 2022 report, wherein Dr. Waggoner related that appellant was seen *via* a telehealth visit on April 20, 2022 and was diagnosed with and treated for COVID-19. 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 and an explanation as to why a positive laboratory test result is not available.<sup>11</sup> Dr. Waggoner did not provide a rationalized opinion supporting a diagnosis of COVID-19 and 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.

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

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 16, 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

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