

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

_____)	
S.L., Appellant)	
)	
and)	Docket No. 23-0421
)	Issued: June 28, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
San Francisco, CA, 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 February 1, 2023 appellant filed a timely appeal from a December 22, 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.

ISSUE

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

FACTUAL HISTORY

On May 21, 2022 appellant, then a 44-year-old customer service clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2022 she developed fever, aches, chills, cough,

¹ 5 U.S.C. § 8101 *et seq.*

and sore throat while in the performance of duty. Appellant stopped work on May 10, 2022. She subsequently tested positive for COVID-19 on May 12, 2022 after taking a home test.

In support of her claim, appellant submitted an undated photograph of a COVID-19 at-home test strip with an illegible result.

A May 20, 2022 report from an unidentified healthcare provider held appellant off work until May 24, 2022 with no restrictions.

In a development letter dated June 22, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and afforded her 30 days to submit the necessary evidence. No response was received.

By decision dated July 25, 2022, OWCP accepted that the May 10, 2022 employment exposure occurred as alleged, but denied appellant's claim, finding that she had not submitted the necessary evidence to establish a COVID-19 diagnosis. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On August 12, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant continued to submit evidence, including an undated statement in which she related that she wished to appeal OWCP's July 25, 2022 decision and was advised that an at-home test was insufficient to establish a COVID-19 diagnosis. She explained that she experienced symptoms after her work shift on May 10, 2022 and took an at-home test on May 12, 2022, which returned with a positive result. Appellant asserted that she was not well enough to leave her home or seek treatment from a physician at that time and, by the time she saw a physician, she tested negative for COVID-19 and was unable to provide a positive result from a medical provider.

In a May 25, 2022 report, Dr. Gary Fausone, a Board-certified emergency physician, treated appellant and related that she was experiencing lingering effects of COVID-19, cough, and had vomited earlier in the day. He diagnosed COVID-19 and persistent cough and noted that she tested positive for COVID-19 on May 12, 2022.

A May 31, 2022 visit note from Dr. Jerry Douglas, a Board-certified family physician, related that appellant tested positive for COVID-19 on May 12, 2022 after feeling sick on May 10, 2022 with chills, fever, cough, myalgias, and marked fatigue. He noted that she felt better after a week, but her symptoms later worsened with increased cough, fogginess, rhinorrhea, shortness of breath, paroxysm, and vomiting. Dr. Douglas indicated that appellant's symptoms "appear to be" COVID-19 related, with slow resolution and diagnosed post-acute sequelae of COVID-19.

In a June 13, 2022 visit note, Christopher Ayeko, a nurse practitioner, noted that appellant presented with a sore throat after testing positive for COVID-19 on May 12, 2022 and that she tested negative on May 19, 2022. He related that she experienced symptoms of fever, fatigue, cough, and sore throat and diagnosed sore throat, history of COVID-19, and allergic rhinitis.

By decision dated December 22, 2022, OWCP's hearing representative affirmed the July 25, 2022 decision.

LEGAL PRECEDENT

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

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. 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

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).

⁶ Public Law 117-2 (March 11, 2021).

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

administration of the self-test is monitored by a medical professional and the results are verified through documentation submitted by such professional.⁸

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 February 1, 2023 alleging that she had developed COVID-19 within 21 days of her exposure while in the performance of duty.⁹ In support of her claim she submitted an undated photograph of a COVID-19 at-home test strip with an illegible result. 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 not sufficient 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 professional. The Board, therefore, finds that this evidence is insufficient to establish a diagnosis of COVID-19.¹⁰

Appellant also submitted a May 25, 2022 report from Dr. Fausone diagnosing COVID-19 and persistent cough, and noted that she had tested positive for COVID-19 on May 12, 2022. As noted above, OWCP's guidance provides 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.¹¹ Dr. Fausone did not provide a rationalized medical opinion supporting a diagnosis of COVID-19 and an explanation as to why a positive laboratory test result was not available.¹² As such, his report is insufficient to establish a diagnosis of COVID-19.

In a May 31, 2022 visit note, Dr. Douglas related that appellant tested positive for COVID-19 on May 12, 2022 after feeling sick on May 10, 2022 with chills, fever, cough, myalgias, and marked fatigue. As noted above, OWCP's guidance provides 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.¹³ While Dr. Douglas offered a rationalized medical opinion

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 *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

supporting a COVID-19 diagnosis, he did not explain why a positive laboratory test was not available. Therefore, this report is insufficient to establish a diagnosis of COVID-19.

Appellant also submitted a June 13, 2022 visit note from Mr. Ayeko, a nurse practitioner, who diagnosed sore throat, history of COVID-19, and allergic rhinitis. As noted above, OWCP's guidance provides 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.¹⁴ However, the Board has long held that certain healthcare providers such as nurses and physician assistants are not considered "physician[s]" as defined under FECA.¹⁵ This evidence is, therefore, insufficient to establish a diagnosis of COVID-19.

The remaining evidence of record consists of a May 20, 2022 report in which an unidentifiable healthcare provider held appellant off work until May 24, 2022. The Board has held that reports that are unsigned or bear an illegible signature cannot be considered probative medical evidence as the author cannot be identified as a physician.¹⁶ This evidence is, therefore, 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 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.

¹⁴ *Id.*

¹⁵ Section 8101(2) of FECA provides that medical opinions can only be given by a qualified physician. This section defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); see also *J.D.*, Docket No. 21-0164 (issued June 15, 2021) (nurse practitioners are not physicians as defined under FECA).

¹⁶ See *T.P.*, Docket No. 21-0868 (issued December 21, 2021); *M.A.*, Docket No. 19-1551 (issued April 30, 2020); *T.O.*, Docket No. 19-1291 (issued December 11, 2019); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

ORDER

IT IS HEREBY ORDERED THAT the December 22, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 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