United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 22-0833**
DEPARTMENT OF VETERANS AFFAIRS, NEW JERSEY VA HEALTH CARE SYSTEM, Lyons, NJ, Employer	)	**Issued: October 12, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On May 5, 2022 appellant filed a timely appeal from an April 19, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the April 19, 2022 decision, appellant submitted additional evidence on appeal. 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*.

ISSUE

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

FACTUAL HISTORY

On January 14, 2022 appellant, then a 62-year-old advanced nurse practitioner, filed a traumatic injury claim (Form CA-1) alleging that on January 10, 2022 she tested positive for COVID-19 during a regularly-scheduled employing establishment COVID-19 polymerase chain reaction (PCR) swab. She indicated that her exposure occurred while in the performance of duty as she covered both inpatient and outpatient care. Appellant related that she was vaccinated and boosted, had no history of participation in large gatherings, and always tested negative during the twice-weekly PCR swabs at work, including the January 6, 2022 PCR swab. She related that she was informed that she was COVID-19 positive by telephone at 10:30 p.m. on January 10, 2022 and was told not to report to work the next morning. Appellant stopped work on January 11, 2022, and was told not to return until January 21, 2022.

In a development letter dated March 10, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant's January 10, 2022 PCR test result indicated that COVID-19 was detected at high levels.

In a January 11, 2022 e-mail, a physician with an illegible signature, noted that appellant was to quarantine from January 10 through 20, 2022 and that she may return to work on January 21, 2022.

By decision dated April 19, 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 FECA[3] 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

[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).

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]

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021[7] 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 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 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 met her burden of proof to establish a diagnosis of COVID-19.

In support of her claim, appellant submitted a January 10, 2022 PCR test result, which indicated high levels of COVID-19. As explained above, a positive PCR or Antigen COVID-19

[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).

[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.

test result is sufficient to establish a diagnosis of COVID-19.[10] The Board, therefore, finds that the positive January 10, 2022 PCR test result is sufficient to establish a diagnosis of COVID-19.

As the medical evidence of record is sufficient to establish a diagnosis of COVID-19, the Board finds that appellant has met her burden of proof. The case is remanded for payment of medical expenses and any attendant disability.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosis of COVID-19.

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 12, 2023
Washington, DC

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

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

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

[10] *Id.*