United States Department of Labor
Employees' Compensation Appeals Board

P.R., Appellant	)	
and	)	**Docket No. 22-0946**
	)	**Issued: September 11, 2023**
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Westbury, NY, 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
JANICE B. ASKIN, Judge

JURISDICTION

On June 4, 2022 appellant filed a timely appeal from a May 23, 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.

ISSUE

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

FACTUAL HISTORY

On December 27, 2021 appellant, then a 33-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2021 he was exposed to and contracted

[1] 5 U.S.C. § 8101 *et seq*.

COVID-19 while in the performance of duty. He explained that he was working in the flight data position when he was exposed. On the reverse side of the claim form, appellant's supervisor disputed that he was injured in the performance of duty, noting that appellant had only provided a COVID-19 "home test."

In support of his claim, appellant submitted an undated photograph of an at-home rapid antigen test card.

A December 26, 2021 memorandum from the employing establishment related that appellant's manager had provided notification that appellant was presumed or confirmed positive for COVID-19. The memorandum further advised that appellant was medically incapacitated from performing safety-related air traffic control duties as of that date and requested that he provide additional medical information.

In a March 29, 2022 statement, appellant explained that he used an at-home test when he was infected with COVID-19, that he could not get access to a polymerase chain reaction (PCR) test during the surge of the omicron variant, and that he was never told that a PCR test was required for his claim.

The employing establishment challenged the claim, asserting that the COVID-19 home test result provided by appellant was insufficient to meet his burden of proof.

In a development letter dated April 5, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted an undated statement listing his daily symptoms and treatment from December 25, 2021 through January 5, 2022, including a positive at-home COVID-19 test on December 26, 2021. He indicated that the list was submitted to the employing establishment at its request in order to return to work after the required quarantine.

OWCP also received an April 4, 2022 positive COVID-19 antibody test result.

In a note dated April 5, 2022, Antonio Iyarsami, a physician assistant, indicated that appellant had COVID-19 on December 26, 2021 confirmed *via* a home test, and that he had symptoms consistent with COVID-19.

By decision dated May 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 FECA[2] 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

[2] *Id*.

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 2021[6] 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 PCR 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 (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.[8]

[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).

[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.

ANALYSIS

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

Appellant submitted an April 4, 2022 positive antibody test result, as well as an April 5, 2022 note from a physician assistant, indicating that appellant had COVID-19 on December 26, 2021 confirmed *via* a home test, and had symptoms consistent with COVID-19. As noted above, OWCP guidance, on its face, provides, in pertinent part, that a diagnosis of COVID-19 may be established through a positive antibody test result, when accompanied by "contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician."[9] Appellant submitted an April 5, 2022 note, wherein Mr. Iyarsami, a physician assistant, clearly indicated that appellant had COVID-19 on December 26, 2021 confirmed *via* a home test, and that he had symptoms consistent with COVID-19.

The April 5, 2022 note is contemporaneous to the positive antibody test result and documents that appellant had symptoms of COVID-19. Given the plain language of OWCP's guidance, this evidence is sufficient to establish a diagnosis of COVID-19. Thus, the Board finds that appellant has met his burden of proof.

CONCLUSION

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

[9] *Id*.

ORDER

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

Issued: September 11, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board