

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

C.S., Appellant)

and)

DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, INDIAN HEALTH SERVICE,)
CHINLE COMPREHENSIVE HEALTH CARE)
FACILITY, Chinle, AZ, Employer)
_____)

**Docket No. 22-0813
Issued: January 25, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 3, 2022 appellant filed a timely appeal from a March 24, 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 to consider the merits of this case.

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.*

FACTUAL HISTORY

On January 12, 2022 appellant, then a 39-year-old pharmacist, filed a traumatic injury claim (Form CA-1) alleging that on January 2, 2022 she was exposed to and contracted COVID-19 while in the performance of duty. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty and indicated that she stopped work on January 5, 2022.

In a development letter dated February 17, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received a March 10, 2022 "statement of certification" signed by appellant. Appellant did not respond to OWCP's development questionnaire.

Appellant submitted a March 10, 2022 statement from Dr. Leslie Stewart, an employing establishment physician specializing in infectious disease and internal medicine, who indicated that appellant tested positive for COVID-19 on January 3, 2022. Dr. Stewart advised that appellant used a home antigen test, which was verified as positive. She informed appellant that she did not need to come in for a Polymerase Chain Reaction (PCR) test because the protocol in the hospital at that time was not to repeat COVID-19 testing for those with a positive home antigen test. Appellant's symptoms were fatigue, headache, congestion, rhinorrhea, and sore throat. Dr. Stewart restricted appellant from work from January 3 through 13, 2022 and informed her that she could return to work on January 14, 2022, as her symptoms had improved.

By decision dated March 24, 2022, OWCP denied appellant's claim, finding that the evidence 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 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

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).

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 be 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 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

ANALYSIS

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

Appellant did not provide a positive COVID-19 test result. In support of her claim, she submitted a March 10, 2022 statement from Dr. Stewart, an employing establishment physician,

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.

who confirmed that appellant tested positive for COVID-19 on January 3, 2022. Dr. Stewart advised that appellant used a home antigen test, which was verified as positive. She noted that appellant had fatigue, headache, congestion, rhinorrhea, and sore throat. Dr. Stewart explained that appellant did not need to come in for a PCR test as the protocol in her hospital at that time was not to repeat COVID-19 testing for those with a positive home antigen test. She noted that appellant was disabled from work from January 3 through 13, 2022 and as her symptoms improved, she was released to work on January 14, 2022.

OWCP's guidance provides that if no positive laboratory test is available, a COVID-19 diagnosis from a physician together with a rationalized medical opinion supporting the diagnosis and an explanation as to why a positive test result is not available would suffice to establish a diagnosis of COVID-19.⁹ As Dr. Stewart's March 10, 2022 opinion meets this criteria, the Board, therefore, finds that it is sufficient to establish a diagnosis of COVID-19. The case will, therefore, be remanded for the 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.

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 24, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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