

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

T.B., Appellant)	
)	
and)	Docket No. 23-0340
)	Issued: August 18, 2023
U.S. POSTAL SERVICE, MID-ISLAND)	
PROCESSING AND DISTRIBUTION CENTER,)	
Melville, NY, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 9, 2023 appellant filed a timely appeal from a November 7, 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 his burden of proof to establish a diagnosis of COVID-19.

FACTUAL HISTORY

On January 7, 2022 appellant, then a 64-year-old mail handler/equipment operator, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2021 he contracted COVID-19

¹ 5 U.S.C. § 8101 *et seq.*

with symptoms including chills, headache, cough, and breathing problems while in the performance of duty. He stopped work on December 24, 2021 and returned to work on January 5, 2022.

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

In a February 17, 2022 letter, the employing establishment challenged appellant's claim by asserting that an unwitnessed self-administered home test for COVID-19 was not sufficient to establish a diagnosis of COVID-19.

In a February 24, 2022 development letter, 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 provide the necessary evidence.

In a March 12, 2022 statement, appellant described the progression of his symptoms, which he believed were due to COVID-19 contracted in the workplace. He asserted that his attending physician refused to see him after he advised the physician that he had obtained a positive result on a self-administered home test. In a March 17, 2022 letter, appellant's union representative asserted that a self-administered home test was sufficient to establish COVID-19.

By decision dated March 28, 2022, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish a diagnosis of COVID-19. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 11, 2022 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. At the August 18, 2022 hearing, he asserted that his self-administered test was valid to establish a diagnosis of COVID-19.

By decision dated November 7, 2022, OWCP's hearing representative affirmed the March 28, 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

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 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 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 his burden of proof to establish a diagnosis of COVID-19.

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.

Appellant filed a claim on January 7, 2022 alleging that he had developed COVID-19 within 21 days of his exposure while in the performance of duty.⁹ In support of his claim he 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 and, as a result, appellant has not met his burden of proof.¹⁰

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.

⁹ *Id.*

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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