

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

_____)
C.B., Appellant)

and)

**U.S. POSTAL SERVICE, PROCESSING &
DISTRIBUTION CENTER, Tukwila, WA,
Employer**)
_____)

**Docket No. 23-0985
Issued: April 17, 2024**

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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 16, 2023 appellant filed a timely appeal from a February 14, 2023 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.²

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.*

² The Board notes that following the February 14, 2023 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On August 26, 2022 appellant, then a 40-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2022 she developed COVID-19 while in the performance of duty. She stopped work on August 13, 2022.

In support of her claim, appellant submitted an undated photograph of a COVID-19 home test, which indicated a positive result.

OWCP received an August 14, 2022 hospital visit summary from Dr. Linh T. Le, a Board-certified emergency medicine physician. Dr. Le noted that the reason for appellant's visit was shortness of breath and cough. She diagnosed COVID-19 and cough. Dr. Le also noted that a COVID-19 polymerase chain reaction (PCR) laboratory test was in progress. Appellant was prescribed medication.

In a development letter dated January 10, 2023, 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.

OWCP subsequently received additional evidence.

In an emergency department triage note dated August 14, 2022, Fantahun M. Tedla, a physician assistant, reported that appellant tested positive for COVID-19 at home that Friday. He noted that she was seen for complaints of a worsening cough and minimal shortness of breath.

In emergency department notes also dated August 14, 2022, Dr. Le noted that appellant had been sick for the prior three days and had a positive COVID-19 home test two days prior. She related that appellant's COVID-19 test was once again positive and that she would be started on anti-viral medication.

In progress notes dated August 29, 2022, Dr. Jeanne Olson, a Board-certified family medicine physician, noted that appellant was seen that day for COVID-19. She reported that appellant was first diagnosed with and treated for COVID-19 on August 14, 2022.

By decision dated February 14, 2023, 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 FECA³ 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 *Supra* note 1.

⁴ *Id.*

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 2021⁷ 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 laboratory test result is not available. Self-administered COVID-19 tests, also called “home tests,” “at-home tests,” or “over-the-counter 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 not established a diagnosis of COVID-19.

In support of her claim, appellant submitted an undated photograph of a COVID-19 home test, which indicated a positive result. However, there is no evidence of record that the home test was monitored by a health care professional. As noted above, OWCP’s guidance provides that a home test is insufficient 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

⁵ *S.L.*, Docket No. 23-0421 (issued June 28, 2023); *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).

⁶ *S.L., id.*; *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).

⁷ Public Law 117-2 (March 11, 2021).

⁸ *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.

professional. The Board, therefore, finds that this evidence is insufficient to establish a diagnosis of COVID-19.¹⁰

Appellant also submitted a hospital visit summary and emergency department notes dated August 14, 2022 from Dr. Le. In the August 14, 2022 hospital visit summary, Dr. Le diagnosed COVID-19 and cough, based on appellant's symptomatology and home test, and related that a COVID-19 PCR laboratory test was in progress. In the second narrative report of the same date, Dr. Le noted that appellant had been sick for the prior three days and had a positive COVID-19 home test two days prior. She related that appellant's COVID-19 test was once again positive and prescribed medication. Dr. Le's reports suggest that appellant underwent a PCR laboratory test on August 14, 2022, which Dr. Le then determined to be positive for COVID-19, however, no PCR test is of record.

As the medical 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.

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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