

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

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J.W., Appellant)	
)	
and)	Docket No. 24-0028
)	Issued: December 20, 2024
DEPARTMENT OF HEALTH & HUMAN)	
SERVICES, WAGNER INDIAN HEALTH)	
SERVICES, Wagner, SD, Employer)	
)	

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 October 16, 2023 appellant filed a timely appeal from a May 23, 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 23, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedures* 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 in connection with the accepted employment exposure.

FACTUAL HISTORY

On March 6, 2023 appellant, then a 45-year-old optometrist, filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2023 she sustained COVID-19 while in the performance of duty. She noted that she was exposed to COVID-19 and that she had initial body aches on February 24, 2023 starting around 8:00 p.m., stopped work on that date, and returned to work on March 6, 2023.

Appellant submitted a March 2, 2023 report from Dr. Mikaela Koenig, a physician Board-certified in family medicine, which confirmed that appellant had a positive COVID-19 test on March 1, 2023.

In a letter dated March 14, 2023, OWCP advised appellant that the claim was converted to an occupational disease claim (Form CA-2) because there was no clear, identifiable incident or incidents over a single day or work shift, that she alleged to have caused the diagnosed COVID-19 condition.

In a development letter dated March 15, 2023, 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 60 days to respond.

In a March 24, 2023 statement, appellant noted that she was exposed to sources of COVID-19 prior to testing positive. She noted that she had a few conversations with W.D., a laboratory supervisor, who also tested positive for COVID-19. Appellant also related that, while performing optometry examinations, she was in close proximity to patients and sat within arm's reach, and sometimes closer, for a prolonged period of time. She alleged that 119 patients utilized the employing establishment optometry department in February 2023. Appellant related that her first symptoms of COVID-19 occurred on Friday, February 24, 2023, and that, during the prior two weeks, she did not leave her house, other than to go to work. She noted that no family members developed COVID-19 and argued that she must have contracted COVID-19 at work. Appellant also explained that her supervisor called her several times on March 1, 2023 and advised that the COVID positivity rate was very high at the employing establishment and that she should get tested for COVID-19.

In a follow-up development letter dated April 19, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the March 15, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP received a March 1, 2023 work excuse note, wherein a physician assistant held appellant off work for the period March 2 through 3, 2023.

By decision dated May 23, 2023, OWCP denied appellant's occupational disease claim. It found that she had not submitted medical evidence sufficient to establish a diagnosis of COVID-19 in connection with the accepted employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish a claim for COVID-19 diagnosed after January 27, 2023, a claimant must provide: (1) evidence of a COVID-19 diagnosis; (2) evidence that establishes the claimant actually experienced the employment incident(s) or factor(s) alleged to have occurred; (3) evidence that the alleged incident(s) or factor(s) occurred while in the performance of duty; and (4) evidence that the COVID-19 condition is found by a physician to be causally related to the accepted employment incident(s) or factor(s). A rationalized medical report establishing a causal link between a diagnosis of COVID-19 and the accepted employment incident(s)/factor(s) is required in all claims for COVID-19 diagnosed after January 27, 2023.⁷

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

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ FECA Bulletin No. 23-02 (issued December 15, 2022). In accordance with the Congressional intent to end the specialized treatment of COVID-19 claims for Federal workers' compensation under section 4016 of the American Rescue Plan Act (ARPA) of 2021, Public Law 117-2 (March 11, 2021), OWCP issued FECA Bulletin No. 23-02, which updated its procedures for processing claims for COVID-19 diagnosed after January 27, 2023.

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 her burden of proof to establish a diagnosis of COVID-19 connection with the accepted employment exposure.

In support of her claim, appellant submitted a March 2, 2023 report from Dr. Koenig who indicated that appellant had a positive COVID-19 test on March 1, 2023. However, Dr. Koenig's mere statement, without an explanation as to why a positive laboratory test result was not available, is insufficient to establish a COVID-19 diagnosis under FECA Bulletin No. 23-02.⁹

As the 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 in connection with the accepted employment exposure.

⁸ *Id.*

⁹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 20, 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