

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

R.O., Appellant)	
)	
and)	Docket No. 23-1083
)	Issued: June 28, 2024
U.S. POSTAL SERVICE, MYRTLE BEACH)	
POST OFFICE, Myrtle Beach, SC, 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 August 11, 2023 appellant filed a timely appeal from a June 9, 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 his 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 June 9, 2023 decision, appellant submitted additional evidence to OWCP. 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.

FACTUAL HISTORY

On January 9, 2023 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 9, 2022 he contracted COVID-19 delivering packages while in the performance of duty. He asserted that he was exposed to multiple people and an overcrowded office that was never cleaned. Appellant stopped work on December 9, 2022.

In support of his claim, appellant submitted a December 10, 2022 note by Jessica Roberts, a nurse practitioner, indicating a diagnosis of COVID-19 on that date.

In a development letter dated April 6, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and afforded him 60 days to respond.

In a development letter dated May 5, 2023, OWCP notified appellant that it received a second copy of the December 10, 2022 note. It advised him that this evidence was insufficient because it failed to substantiate his diagnosis of COVID-19 and requested he submit a positive COVID-19 lab result and/or a COVID-19 diagnosis from a physician containing a rationalized medical opinion supporting the diagnosis and explaining why a positive test result was not available.

By decision dated June 9, 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 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 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.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

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

³ *Id.*

⁴ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 23, 2019); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁷ Public Law 117-2 (March 11, 2021).

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 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.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a diagnosis of COVID-19.

Appellant filed a claim on January 9, 2023 alleging that he had contracted COVID-19 while in the performance of duty on December 9, 2022.¹⁰ However, he did not provide a positive PCR or Antigen COVID-19 test result, or positive antibody test result with supporting medical documentation.¹¹

In support of his claim, appellant submitted a note dated December 10, 2022, wherein Ms. Roberts, a nurse practitioner, indicated that appellant tested positive for COVID-19 on that date. As noted above, OWCP's guidance provides that if no positive laboratory test is available, appellant must submit 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

⁸ ARPA, *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.

¹⁰ *Id.*

¹¹ *Id.*

not available.¹² Appellant failed to provide a rationalized opinion from a physician supporting a COVID-19 diagnosis. The Board has long held that certain healthcare providers such as nurse practitioners are not considered qualified “physician[s]” as defined under FECA and, thus, their findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹³ Accordingly, this evidence is insufficient to establish a diagnosis of COVID-19.¹⁴

As the medical evidence of record is insufficient to establish a diagnosis of COVID-19, the Board finds that appellant has not met his burden of proof.¹⁵

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.

¹² *L.L.*, Docket No. 22-1020 (issued June 28, 2023).

¹³ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *see also S.S.*, Docket No. 21-1140 (issued June 29, 2022) (physician assistants are not considered physicians under FECA and are not competent to provide medical opinions); *L.S.*, Docket No. 19-1231 (issued March 30, 2021) (a physician assistant and nurse practitioner are not considered physicians as defined under FECA); *P.S.*, Docket No. 17-0598 (issued June 23, 2017) (registered nurses are not considered physicians as defined under FECA).

¹⁴ *J.C.*, Docket No. 22-0017 (issued June 14, 2022).

¹⁵ *K.Y.*, Docket No. 22-0975 (issued June 28, 2023).

ORDER

IT IS HEREBY ORDERED THAT the June 9, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2024
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