



## **FACTUAL HISTORY**

On October 6, 2023 appellant, then a 63-year-old carpenter, filed a traumatic injury claim (Form CA-1) alleging that on September 25, 2023 he contracted COVID-19 while in the performance of duty. He attributed his condition to working next door to the room in the employing establishment where COVID-19 testing took place. Appellant requested COP. He stopped work on September 25, 2023 and returned to work on October 2, 2023. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty.

On October 17, 2023 the employing establishment challenged appellant's claim, contending that he had failed to submit sufficient medical evidence to establish an injury, or a medical condition causally related to his employment.

By decision dated November 16, 2023, OWCP informed appellant that they had converted his traumatic injury claim to an occupational disease claim and denied appellant's claim for COP, as he was not eligible for COP.

In a development letter dated November 16, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and whether he was exposed to another individual who was diagnosed with COVID-19. OWCP afforded the employing establishment 30 days to respond.

On November 16, 2023 the employing establishment advised that there were certain areas within its facility in which masks were required due to possible COVID-19 exposure. It further advised that appellant was assigned to multiple tasks throughout the facility. The employing establishment noted that he asserted that he was exposed to COVID-19 in an elevator lobby where COVID-19 patients were present. It explained that personal protective equipment such as masks, shields, and gloves were provided to employees. The employing establishment indicated that it had no knowledge of appellant's exposure to specific individual diagnosed with COVID-19 while performing his federal job duties.

In a follow-up development letter dated December 20, 2023, OWCP advised appellant that it had performed an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 16, 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.

On December 12, 2023 appellant completed the development questionnaire and explained that he was exposed to COVID-19 for one hour per day, two days per week prior to September 25, 2023. He advised that he was unaware of coworkers who were exposed during this period and that he sought medical treatment at the employing establishment's emergency room.

On September 25, 2023 appellant sought treatment at the employing establishment's emergency department from Heather L. Forbes, a physician assistant, due to the symptoms of a cough and fatigue beginning September 22, 2023. Ms. Forbes diagnosed COVID-19 and provided a Rapid Antigen Test which she read as positive for COVID-19. Appellant also underwent a fusion polymerase chain reaction (PCR) COVID-19 test that Michelle H. Rymarsuk, a physician assistant, read as confirming the diagnosis of COVID-19 on September 26, 2023.

By decision dated February 5, 2024, OWCP denied appellant's occupational disease claim finding, finding that the medical evidence of record was insufficient to establish a diagnosis of COVID-19 in connection with the accepted work exposure. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> 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.

## **ANALYSIS -- ISSUE 1**

The Board finds that appellant has established a diagnosis of COVID-19 in connection with the accepted employment exposure.

Appellant submitted a September 25, 2023 note from Ms. Forbes, a physician assistant, describing his symptoms of cough and fatigue consistent with COVID-19. In the course of Ms. Forbes treatment, he underwent a rapid antigen test that she read as positive for COVID-19. Appellant also underwent a PCR test on September 25, 2023 which was pending on that date. In a September 26, 2023 note, Ms. Rymarczuk, a physician assistant, confirmed that the results of COVID-19 PCR test were positive. The Board has previously held that a diagnosis of COVID-19 may be established through a positive antibody test or home test result, when “monitored by a medical professional and the results are verified through documentation submitted by such professional.”<sup>7</sup> In the September 25, 2023 note, Ms. Forbes indicated that appellant had COVID-19 on September 25, 2023 confirmed *via* a rapid antigen test, and that he had symptoms consistent with COVID-19. This note is contemporaneous to the positive antibody test result and documents that appellant had symptoms of COVID-19. Furthermore, Ms. Rymarczuk, a physician assistant, confirmed on September 26, 2023 that the September 25, 2023 COVID-19 PCR test was positive. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence regarding the issue of causal relationship.<sup>8</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## **LEGAL PRECEDENT -- ISSUE 2**

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.<sup>9</sup> This latter section provides that written notice of injury must be given within 30 days.<sup>10</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>11</sup>

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<sup>7</sup> *A.G.*, Docket No. 22-1199 (issued February 1, 2024); *P.R.*, Docket No. 22-0946 (issued September 11, 2023); 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 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.

<sup>8</sup> *See V.S.*, Docket No. 23-0005 (issued February 12, 2024); *S.R.*, Docket No. 22-0453 (issued March 2, 2023); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

<sup>9</sup> *Supra* note 1 at § 8118.

<sup>10</sup> *Id.*

<sup>11</sup> *R.M.*, Docket No. 21-0446 (issued January 12, 2022); *D.P.*, Docket No. 21-0596 (issued August 31, 2021); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file a Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.<sup>12</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant initially filed a Form CA-1 for a traumatic injury, but OWCP, in accordance with FECA Bulletin 23-02 converted his claim to an occupational disease, which provides that claims for COVID-19 diagnosed after January 27, 2023 should be filed as an occupational disease claim unless the employee attributes his or her condition to a clear identifiable incident or incidents that occurred over a single day or work shift.<sup>13</sup> As appellant's injuries occurred over more than a single workday or shift, the Board finds that OWCP properly determined that his claim was one for an occupational disease rather than a traumatic injury.<sup>14</sup> Consequently, he is not eligible for COP.<sup>15</sup>

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 met his burden of proof to establish a diagnosis of COVID-19 in connection with the accepted employment exposure. The Board further finds that appellant has not met his burden of proof to establish entitlement to COP.

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<sup>12</sup> 20 C.F.R. § 10.205(a). *See also* *R.M., id.*; *T.A.*, Docket No. 21-0041 (issued May 3, 2021); *T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>13</sup> *Supra* note 6.

<sup>14</sup> 20 C.F.R. §§ 10.5(q), 10.5(ee); *see also* *A.B.*, Docket No. 19-0842 (issued September 17, 2019); *J.F.*, Docket No. 10-2134 (issued July 6, 2011).

<sup>15</sup> *See* *R.M.*, *supra* note 11; *S.G.*, Docket No. 20-0538 (issued December 9, 2020); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.V.*, Docket No. 15-0942 (issued March 8, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2024 merit 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. The November 16, 2023 decision of 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

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