United States Department of Labor
Employees' Compensation Appeals Board

M.S., Appellant	)	
and	)	**Docket No. 22-0417**
	)	**Issued: October 24, 2024**
U.S. POSTAL SERVICE, POST OFFICE MEDICAL UNIT, Detroit, MI, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
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 27, 2022 appellant, through counsel, filed a timely appeal from a January 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).[2] Pursuant to the Federal Employees' Compensation Act[3] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] The Board previously issued a decision on this matter on August 8, 2022. However, by order dated October 24, 2024, the Board, on its own motion, set aside its August 8, 2022 decision, declaring it *void ab initio*. It noted that it would issue this new decision. *Order Vacating Prior Board Decision and Reinstating Appeal, M.S.*, Docket No. 22-0417 (issued October 24, 2024).

[3] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosis of COVID-19.

FACTUAL HISTORY

On May 20, 2021 appellant, then a 55-year-old occupational health nurse, filed a traumatic injury claim (Form CA-1) alleging that in March 2020 she was possibly exposed to COVID-19 while in the performance of duty. She asserted that, on March 19, 2020 she was informed that a coworker was hospitalized for COVID-19. Appellant noted that the coworker worked with her in the medical unit.

In a May 25, 2021 letter, the employing establishment controverted the claim. It contended that appellant's last day at work was on March 18, 2020, due to pending disciplinary issues. The employing establishment further contended that it had no knowledge that the employee who appellant was exposed to had COVID-19. It further contended that appellant's allegation was based on hearsay evidence and is without merit. The employing establishment also asserted that the alleged employee's last day at work was March 16, 2020, and on that day, appellant worked in a different department. It noted that appellant never worked closely with the employee, and the only close contact she could have had with the employee was walking past the employee's office or briefly in a hallway. Lastly, the employing establishment asserted that appellant did not submit any documentation containing a diagnosis of COVID-19 due to workplace exposure.

OWCP, in a development letter dated May 25, 2021, 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 30 days to respond.

OWCP received laboratory test results dated August 14, 2020 indicating that appellant's laboratory test result was positive for "anti-SARS-COV-2 antibodies." The results further noted that a positive result was indicative of exposure to the SARS-COV-2 virus and initiation of an immune response.

OWCP subsequently received medical evidence from Dr. Utibe Effiong, an attending internist. In an April 23, 2020 individual sick slip, Dr. Effiong noted that he evaluated appellant. He further noted that she related to him that she had been self-quarantining at home since March 19, 2020, due to exposure to a patient with COVID-19 at work. Dr. Effiong opined that she may return to work on May 10, 2020.

In a May 17, 2020 individual sick slip, Dr. Effiong evaluated appellant, and opined that she should continue to self-quarantine for seven additional days. He advised that she could tentatively return to work on May 25, 2020.

Dr. Effiong, in an individual sick slip dated May 26, 2020, requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. He advised that if she was feeling well, then she could return to work on June 8, 2020.

In an August 1, 2020 letter, Dr. Effiong confirmed that he had evaluated appellant on April 23, 2020, and had issued an individual sick slip.

In a May 26, 2020 letter, Dr. Mark Owolabi, a Board-certified family practitioner, requested that appellant be excused from work through June 7, 2020 due to a sequela of COVID-19. He advised that she could return to work on June 8, 2020 if she was feeling well.

OWCP subsequently received visit notes dated April 23 and May 17, 2020 from Dr. Effiong who indicated that appellant provided no responses to triage questions regarding her exposure to COVID-19. Dr. Effiong diagnosed cough; dyspnea, unspecified; encounter for examination and observation following a work accident; flu due to unidentified influenza virus without other respiratory manifest; and mild intermittent asthma with status asthmaticus.

In an August 14, 2020 chest x-ray report, Dr. A.J. Cook, a radiologist, provided an impression that no acute cardiopulmonary disease was detected. Handwritten annotations by an unknown author noted diagnoses of upper respiratory infection, cough, and other Coronavirus as the cause of diseases classified elsewhere, and that the encounter was for screening for other viral diseases.

OWCP, by decision dated July 14, 2021, accepted that the March 19, 2020 employment exposure occurred as alleged, but denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a diagnosis of COVID-19. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 21, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received visit notes dated April 20, 22, and 23, and May 17, 2020 from Dr. Effiong. In the April 20, 2020 visit note, Dr. Effiong indicated that appellant responded "Yes" to a triage questions that she had been exposed "to a known or expected COVID-19 patient in the last 14 days." Additionally, in his visit notes, he reiterated a history of the accepted March 19, 2020 employment exposure. Dr. Effiong noted that appellant had self-quarantined since that date. He indicated that she was not reported to have COVID-19 and was not hospitalized for flu-like symptoms or pneumonia in the 14 days prior to onset of her symptoms. Dr. Effiong further reported that during her illness she had fever, felt feverish, and experienced chills, muscle aches, runny nose, sore throat, cough, shortness of breath, nausea or vomiting, headache, abdominal pain, diarrhea. In the 14 days prior to symptom onset, appellant had traveled to Michigan which had known COVID-19 cases. Dr. Effiong provided an assessment of COVID-19 exposure. He diagnosed mild intermittent asthma with status asthmaticus; cough; dyspnea, unspecified; encounter for examination and observation following a work accident; flu due to unidentified influenza virus without other respiratory manifest; and contact with and exposure to other viral communicable diseases.

A telephonic hearing was held on November 2, 2021.

By decision dated January 7, 2022, an OWCP hearing representative affirmed the July 14, 2021 decision. She found that appellant was a covered employee under section 4106 of the

American Rescue Plan Act (ARPA) of 2021, but determined that the medical evidence of record was insufficient to establish a diagnosis of COVID-19 in connection with the accepted March 19, 2020 employment exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

Under section 4016 of the ARPA of 2021[8] 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.[9]

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; (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

[4] *Supra* note 1.

[5] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *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).

[7] *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).

[8] Public Law 117-2 (March 11, 2021).

[9] ARPA, *id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

(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.[10]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a diagnosis of COVID-19.

Appellant submitted an August 14, 2020 positive antibody test result indicating that she had COVID-19

In addition to the antibody test, appellant also submitted a series of notes by Dr. Effiong. In an August 1, 2020 letter, Dr. Effiong confirmed that he had evaluated appellant on April 23, 2020, and had issued an individual sick slip. In April 20 and 23, 2020 notes, he indicated that appellant had symptoms consistent with COVID-19. Dr. Effiong provided an assessment of COVID-19 exposure on March 19, 2020, and explained that appellant had fever, felt feverish, and experienced chills, muscle aches, runny nose, sore throat, cough, shortness of breath, nausea or vomiting, headache, abdominal pain, and diarrhea during her illness.

As noted above, OWCP's procedures provide, in pertinent part, that a diagnosis of COVID--19 may be established through a positive antibody test result, when accompanied by "contemporaneous medical evidence that the claimant had documented symptoms of and/or was treated for COVID-19 by a physician."[11]

The evidence from Dr. Effiong is contemporaneous to the positive antibody test result, and document that appellant had symptoms of COVID-19. Given the plain language of OWCP's procedures, this evidence is sufficient to establish a diagnosis of COVID-19.[12] Thus, the Board finds that appellant has met her burden of proof.[13]

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a diagnosis of COVID-19.

[10] 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.

[11] *Id*.

[12] *P.R.*, Docket No. 22-0946 (issued September 11, 2023).

[13] *Id*.

ORDER

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

Issued: October 24, 2024
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