

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

S.B., Appellant	)	
	)	
and	)	Docket No. 23-0238
	)	Issued: October 3, 2024
U.S. POSTAL SERVICE, POST OFFICE,	)	
Richmond, VA, 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 December 6, 2022 appellant filed a timely appeal from an August 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

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

**FACTUAL HISTORY**

On February 14, 2022 appellant, then a 59-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 21, 2020 she developed severe cough, fever,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

difficulty breathing, body aches, sore throat, and congestion due to working with coworkers in a high-risk work area while in the performance of duty.

OWCP received evidence in support of the claim, including February 10, 2020 encounter notes from Dr. Anjali Sues, a Board-certified family practitioner, noting that appellant presented with cough, moderate nasal and chest congestion, and a runny nose. Dr. Sues diagnosed cough and throat pain. In a work excuse note of even date, she held appellant off work the following day.

In a March 11, 2020 encounter note, Dr. Sues noted that appellant was treated one month prior for a presumed upper respiratory infection or sinusitis and was prescribed a 10-day course of antibiotics that cleared her symptoms. She related that appellant had a reoccurrence of symptoms including dry cough, mucous, and constant clearing of her throat. Dr. Sues diagnosed rheumatoid arthritis, cough, and allergic rhinitis and prescribed medication.

In a March 30, 2020 work excuse note, Dr. Sues noted that she evaluated appellant on March 16, 2020 for symptoms consistent with “presumed COVID-19.” She advised appellant to self-quarantine for 14 days while recovering and held her off work from March 16 to 30, 2020.

A May 5, 2020 letter from Dr. Sues related that appellant was classified as high-risk for COVID-19 and had been advised to self-quarantine. She held appellant off work until May 18, 2020.

In a March 9, 2022 report, Dr. Pamela Herbert, a Board-certified emergency physician, noted that appellant was infected with COVID-19 on February 21, 2020 due to her work-related duties. She explained that the intensity and severity of appellant’s illness caused appellant to fear for her life, after which she developed ongoing and increasing anxiety and depression surrounding her significant fear that she may contract COVID-19 a second time. Appellant reported insomnia and interrupted sleep due to the discomfort and pain in her neck, upper back, and left shoulder. Dr. Herbert explained that appellant’s work-related duties exposed her to numerous people each day, including the public and coworkers, and that her initial COVID-19 symptoms included high fever, severe respiratory symptoms with cough, headaches, joint pain in the neck and upper back, body aches, and insomnia. She indicated that appellant had not been tested for COVID-19 because the Polymerase Chain Reaction (PCR) test was unavailable in February 2020 and COVID-19 was not officially declared a pandemic until March 11, 2020.

On April 14, 2022 appellant requested a formal review of her claim and related that she anticipated that her medical expenses would be greater than \$1,500.00. She explained that at the time of her initial treatment, there was no test available for COVID-19.

In a development letter dated April 19, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received an illegible May 13, 2022 report from Dr. Sues.

A May 24, 2022 report of work status (Form CA-3) indicated that appellant stopped work on February 21, 2022 and returned to full-time work with no restrictions on February 28, 2022.

By decision dated August 16, 2022, OWCP accepted that the February 21, 2020 employment exposure occurred as alleged, but denied appellant's claim finding that she had not submitted the necessary medical evidence to establish a COVID-19 diagnosis. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

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 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

Under section 4016 of the American Rescue Plan Act (ARPA) of 2021<sup>6</sup> 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.<sup>7</sup>

To establish a diagnosis of COVID-19, a claimant must submit the following: (1) a positive 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 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

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

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> Public Law 117-2 (March 11, 2021).

<sup>7</sup> ARPA, *id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

medical professional and the results are verified through documentation submitted by such professional.<sup>8</sup>

### ANALYSIS

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

The Board notes that the case record does not contain a laboratory test result. As noted above, OWCP's procedures provide that 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.<sup>9</sup>

In support of her claim, appellant submitted medical evidence from Dr. Sues and Dr. Herbert. In a March 30, 2020 work excuse note, Dr. Sues noted that she evaluated appellant on March 16, 2020 for symptoms consistent with "presumed COVID-19." A May 5, 2020 letter from Dr. Sues related that appellant was classified as high-risk for COVID-19. In a March 9, 2022 report, Dr. Herbert noted that appellant's work-related duties exposed her to numerous people each day, including the public and coworkers, and that her initial COVID-19 symptoms included high fever, severe respiratory symptoms with cough, headaches, joint pain in the neck and upper back, body aches, and insomnia. She explained that appellant had not been tested for COVID-19 because PCR tests were unavailable in February 2020 and COVID-19 was not officially declared a pandemic until March 11, 2020. Dr. Herbert opined that, in her medical opinion, appellant was infected with COVID-19 on February 21, 2020 as a result of her duties as a mail processor clerk in a large regional postal facility. She, therefore, recommended approval of the diagnosis of COVID-19.

As the medical evidence of record contains rationalized medical opinion supporting the diagnosis of COVID-19 and an explanation as to why a positive test result is not available, the Board finds that appellant has met her burden of proof to establish a diagnosis of COVID-19.<sup>10</sup>

The case shall therefore be remanded for payment of medical expenses and any attendant disability.

### CONCLUSION

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

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<sup>8</sup> 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.

<sup>9</sup> *Id.*

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 16, 2022 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 3, 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