

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

C.W., Appellant)	
)	
and)	Docket No. 23-0670
)	Issued: October 3, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
BECKLEY VA MEDICAL CENTER,)	
Beckley, WV, Employer)	
)	

Appearances:
Appellant, pro se
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 April 6, 2023 appellant filed a timely appeal from an April 5, 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.

ISSUE

The issue is whether appellant has established manifestation of COVID-19 symptoms or a positive test result within 21 days of a covered exposure.

FACTUAL HISTORY

On July 28, 2022 appellant, then a 41-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on July 6, 2022 she contracted COVID-19 after she was exposed while

¹ 5 U.S.C. § 8101 *et seq.*

in the performance of duty. She related that she tested positive for COVID-19 and stopped work on July 6, 2022. On the reverse side of the form the employing establishment controverted the claim by checking a box marked “No” that appellant was not exposed to COVID-19 in the performance of duty. It explained that she was sent home to telework on July 5, 2022, after her daughter had tested positive for COVID-19. Appellant subsequently reported testing positive for COVID-19 on July 6, 2022. OWCP assigned this claim OWCP File No. xxxxxx776.²

In a July 6, 2022 medical note, Tera Brown, a certified medical assistant, confirmed that appellant tested positive for COVID-19.

An unsigned emergency room report dated July 14, 2022, indicated that appellant was seen in the emergency department for pleurisy and COVID-19. An unsigned July 14, 2022 report documented that appellant was seen in the emergency department and could return to work on July 19, 2022. A July 20, 2022 report with an illegible signature documented that she was seen in the emergency department and could return to work on July 21, 2022.

In a development letter dated March 3, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On March 8, 2023 appellant responded to OWCP’s questionnaire and described the timeline of events, medical treatment, and use of leave as a result of contracting COVID-19. She clarified that she began to experience symptoms on July 1, 2022, after meeting with a veteran on that date. Appellant reported having to take leave in the weeks following her positive test results as she was too sick to work.

By decision dated April 5, 2023, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish manifestation of COVID-19 symptoms (or a positive test result) within 21 days of the covered 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 while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to

² On August 29, 2022 appellant filed a Form CA-1 alleging that she contracted COVID-19 on August 11, 2022 while in the performance of duty. OWCP assigned OWCP File No. xxxxxx899. On August 29, 2022 appellant filed another Form CA-1 alleging that she contracted COVID-19 on August 22, 2022. OWCP assigned OWCP File No. xxxxxx926. It administratively combined OWCP File Nos. xxxxxx899, xxxxxx926, and xxxxxx776, with the latter designated as the master file.

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).

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 of 2021 (ARPA),⁷ 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-19.⁸

OWCP’s procedures provide that the employee is deemed to have had exposure if, during the covered exposure period, he or she carries out: (1) duties that require a physical interaction with at least one other person (a patient, a member of the public, or a coworker) in the course of employment duties, or (2) duties that otherwise include a risk of exposure to COVID-19. OWCP’s procedures further provide that the evidence should establish manifestation of COVID-19 symptoms (or positive test result) within 21 days of the covered exposure.⁹

ANALYSIS

The Board finds that appellant has established manifestation of COVID-19 symptoms within 21 days of the covered exposure.

Appellant filed a traumatic injury claim on July 28, 2022, alleging that she had developed COVID-19 on July 1, 2022. The case record establishes that the date of appellant’s last employment exposure was July 5, 2022. As noted above, OWCP’s procedures provide that the evidence should establish manifestation of COVID-19 symptoms (or positive test result) within 21 days of the covered exposure.¹⁰ In support of her claim, appellant submitted a July 6, 2022 medical note, wherein Ms. Brown confirmed that appellant had tested positive for COVID-19. As the medical evidence of record is sufficient to establish manifestation of COVID-19 symptoms within 21 days of the covered exposure, the Board finds that appellant has met her burden of proof. The

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).

⁸ *ARPA, id.*; FECA Bulletin No. 21-09 (issued April 28, 2021).

⁹ FECA Bulletin No. 21-09 (issued April 27, 2021).

¹⁰ *Id.*

case shall therefore be remanded for further consideration of the evidence, to be followed by a *de novo* decision regarding whether appellant has established a diagnosis of COVID-19.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish manifestation of COVID-19 symptoms within 21 days of the covered exposure.

ORDER

IT IS HEREBY ORDERED THAT the April 5, 2023 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

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