

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

_____)	
T.S., Appellant)	
)	
and)	Docket No. 19-1228
)	Issued: December 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
North Houston, TX, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On May 13, 2019 appellant filed a timely appeal from a March 29, 2019 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 established entitlement to continuation of pay (COP).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the March 29, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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. *Id.*

FACTUAL HISTORY

On February 9, 2019 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on February 3, 2019, she injured her back when she lifted a stack of magazines and turned awkwardly while in the performance of duty. She checked a box on the claim form indicating that she was requesting COP. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on the date of injury.

In a report dated February 19, 2019, received by the employing establishment on February 20, 2019 and forwarded to OWCP on February 23, 2019, Dr. Steven B. Inbody, a Board-certified neurologist, diagnosed sprain of ligaments of the cervical spine, sprain of ligaments of the lumbar spine, brachial neuritis/radiculitis, and left leg sciatica. He noted that appellant was to be off work from February 19 to March 27, 2019 due to total incapacitation. A COP nurse was assigned to appellant's claim on February 25, 2019.

In a development letter dated February 25, 2019, OWCP advised appellant of the deficiencies of her claim, informed her of the type of evidence needed to establish her claim, and provided a questionnaire for her completion. It afforded her 30 days to submit the necessary evidence.

OWCP continued to receive medical evidence.

By decision dated March 29, 2019, OWCP accepted appellant's claim for sprain of ligaments of the thoracic spine. By separate decision of the same date, it denied COP during appellant's absence from work finding that she had not submitted medical evidence to the employing establishment within 10 days of the date of injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes continuation of pay, 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.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

OWCP's regulations provide, in pertinent part, that to be eligible for continuation of pay, 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 Form

³ 5 U.S.C. § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

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.⁶

OWCP's regulations and procedures further provide that COP may be terminated if medical evidence which on its face supports disability due to a work-related injury is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist). However if the required medical evidence is later provided, COP shall be reinstated retroactive to the date of termination.⁷

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant filed her traumatic injury claim (Form CA-1) on February 9, 2019 alleging a traumatic injury on February 3, 2019. In a report dated February 19, 2019, received by the employing establishment on February 20, 2019 and forwarded to OWCP on February 23, 2019, Dr. Inbody, diagnosed sprain of ligaments of the cervical spine, sprain of ligaments of the lumbar spine, brachial neuritis/radiculitis, and left leg sciatica due to the accepted employment injury. He noted that appellant was to be off work from February 19 to March 27, 2019 due to total incapacitation. A COP nurse was assigned on February 23, 2019 to assist appellant's return to work.

On March 29, 2019 OWCP accepted the claim for thoracic spine ligament sprain. By separate decision of even date, it denied COP as appellant had not submitted medical evidence to the employing establishment within 10 days of the date of injury.

An employer may terminate COP of an employee when medical evidence which on its face supports disability due to a work-related injury is not received within 10 calendar days after the claim is submitted. However, once medical evidence is received, COP should be reinstated retroactively. The employing establishment received Dr. Inbody's report on February 20, 2019. While this report was not received within 10 days of the injury, once it was received, OWCP's regulations and procedures required that the employing establishment reinstate appellant's entitlement to COP retroactively to the date of its termination.⁸

The case must therefore be remanded for OWCP to determine appellant's entitlement to a retroactive reinstatement of COP. After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁷ 20 C.F.R. § 10.222(a)(1); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.9(a) (June 2012).

⁸ *Id.*

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2019 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: December 9, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board