

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

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| C.C., Appellant |) | |
| |) | |
| and |) | Docket No. 18-0912 |
| |) | Issued: July 11, 2019 |
| DEPARTMENT OF JUSTICE, FEDERAL |) | |
| BUREAU OF PRISONS, Butner, NC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 23, 2018 appellant filed a timely appeal from a November 9, 2017 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 met her burden of proof to establish entitled to continuation of pay (COP).

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the November 9, 2017 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 April 19, 2017 appellant, then a 63-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2017 she was assaulted by a patient (inmate) while in the performance of duty. The patient kicked her in the head and appellant hyperextended her right arm to avoid falling. On the reverse side of the claim form, the employing establishment advised that appellant stopped work on March 13, 2017 and returned to work on April 19, 2017. Appellant was treated in a hospital emergency department following the March 13, 2017 incident. On April 28, 2017 OWCP accepted her traumatic injury claim for head contusion, unspecified right shoulder/arm injury, and thorax (front wall) muscle/tendon strain.

By decision dated June 22, 2017, OWCP denied COP for the period March 14 to April 26, 2017. It explained that appellant had not reported her injury on an OWCP-approved form within 30 days following the March 13, 2017 employment injury. OWCP further advised appellant that the denial of COP did not affect her entitlement to compensation and she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to her accepted employment injury.

On July 21, 2017 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an accompanying statement, she explained that, on March 13, 2017, she was assaulted by an inmate while caring for him and afterwards was taken by ambulance to the hospital. Appellant explained that she was given an authorization for examination and/or treatment (Form CA-16), but no other paperwork. She also indicated that she was never on compensation and unaware of the process and procedures. Appellant noted that while she was recovering, she received calls from the hospital about bills and was asked for a case number. She indicated that she called the employing establishment's safety office and received instructions about logging onto their website. Appellant also explained that she started an account and believed that she "was finished." She also noted that she had an old computer with issues and she had trouble with her screen, which was half gray. Appellant also noted that she received no other assistance from the employing establishment until she returned to work and was advised that she had not finished filing her claim. She noted that, at that time, she received assistance. Appellant explained that she was the sole provider in her household and to deny her care would be a financial burden.

In a July 21, 2017 letter to OWCP, the employing establishment noted it strongly supported a reversal of the denial of appellant's COP. It explained that it adopted the use of the Employees' Compensation Operations & Management Portal (ECOMP), and while appellant had a prior claim in 2012, which was submitted via paper (Form CA-1), her previous experience with the claims process predated the adoption of ECOMP. The employing establishment further noted that appellant completed an Occupational Safety & Health Administration (OSHA) Injury & Illness Incident Report (OSHA Form 301) *via* ECOMP on March 28, 2017, and completed her Form CA-1 following her return to work in April 2017. OWCP subsequently received a copy of an OSHA Form 301, which was dated April 19, 2017.

By decision dated November 9, 2017, OWCP's hearing representative affirmed the June 22, 2017 decision denying COP. She explained that appellant had not filed her Form CA-1 within 30 days following her injury, and that the OSHA Form 301 was not an acceptable substitute for a Form CA-1. The hearing representative further found that FECA did not recognize any

mitigating factors or exceptional circumstances that would excuse appellant's failure to satisfy the 30-day filing requirement under 5 U.S.C. § 8118(a).

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 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

The Board has held that section 8122(d)(3) of FECA,⁷ which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay.⁸ Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to continuation of pay.

Appellant filed written notice of her traumatic injury (Form CA-1) on April 19, 2017. On April 28, 2017 OWCP accepted her claim for head contusion, unspecified right shoulder/arm injury, and thorax (front wall) muscle/tendon strain. By decision dated June 22, 2017, it denied COP, as appellant's claim was not filed within 30 days following the March 13, 2017 employment injury.

³ 5 U.S.C. § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

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

⁷ 5 U.S.C. § 8122(d)(3).

⁸ *J.S.*, *supra* note 5.

⁹ *Id.*; *Dodge Osborne*, 44 ECAB 849, 855 (1993).

In a July 21, 2017 letter to OWCP, the employing establishment supported appellant's claim for COP and noted that her previous experience with the claims process predated the adoption of ECOMP. It advised that she had completed an OSHA Form 301 *via* ECOMP on March 28, 2017, which was within 30 days of her injury. In her July 21, 2017 request for a review of the written record, appellant explained that she was unaware of the process and procedures for filing a claim for COP and that she started an account and believed she "was finished." She noted that she had an outdated computer that was not working properly, and when she returned to work was advised that she had not finished filing her claim. Notwithstanding appellant's reported technical difficulties and the lack of written instructions, there is no provision in FECA for excusing a late filing regarding COP.¹⁰ Because appellant filed written notice of her traumatic injury claim (Form CA-1) on April 19, 2017, the Board finds that it was not filed within 30 days of the March 13, 2017 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Therefore appellant is not entitled to COP.¹¹

CONCLUSION

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

¹⁰ *Id.*

¹¹ As OWCP previously explained, the denial of COP does not preclude appellant from filing a claim for wage-loss compensation (Form CA-7) for any time missed from work due to the accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board