

FACTUAL HISTORY

On August 6, 2020 appellant, then a 61-year-old general supply specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 4, 2020 he contracted COVID-19 after performing physical inventory in close proximity to a coworker who was frequently coughing while in the performance of duty. He stopped work on May 11, 2020 and returned to work on July 28, 2020.

In support of his claim, appellant submitted a laboratory test result, dated May 8, 2020, which revealed that he tested positive for COVID-19.

In letters dated May 10 and 11, 2020, Dr. Janaki Annavarapu, a Board-certified internist, confirmed that appellant tested positive for COVID-19 and placed him off work from May 11 through 22, 2020.

In a May 13, 2020 emergency department note, Dr. Nicole Adams, a Board-certified osteopath, specializing in emergency medicine, noted that appellant was experiencing chest pain and shortness of breath. She indicated that appellant was diagnosed with COVID-19 and pneumonia and continued to have fevers and chills. Dr. Adams examined appellant and diagnosed COVID-19, nonspecific chest pain, pneumonia of both lungs, and shortness of breath.

In a May 13, 2020 hospital note, Dr. Errol Zimmerman, a Board-certified internist, noted that appellant experienced right-sided chest discomfort and shortness of breath. He indicated that appellant had bilateral infiltrates, which were likely due to COVID-19.

Hospital discharge notes, dated June 3, 2020, showed that appellant was diagnosed with pneumonia due to COVID-19, sepsis, acute respiratory failure with hypoxia, elevated liver function tests, prophylactic measure, cardiomyopathy, pneumomediastinum, and loose stools.

In a June 12, 2020 addendum, Dr. Zimmerman noted that appellant was admitted to the hospital with pneumonia secondary to COVID-19 and sepsis. He indicated that appellant completed a course of antibiotics for superimposed bacterial infection and that computerized tomography (CT) scans of his chest revealed worsening lung changes. Dr. Zimmerman reported that appellant was awaiting long-term acute care placement.

In a development letter dated August 10, 2020, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and details regarding appellant's alleged COVID-19 exposure. It afforded both parties 30 days to submit the necessary evidence.

OWCP subsequently received an August 7, 2020 letter from Dr. Annavarapu who restricted appellant to four hours of work per day until he was no longer under cardiologist care.

In an August 11, 2020 e-mail, J.G., appellant's supervisor, responded to OWCP's development questionnaire. She noted that on May 4, 2020 appellant conducted inventory in an isolated office for a few hours. J.G. indicated that appellant was in contact with one former

employee who had been notified. She reported that appellant's shift consisted of direct contact with the public and that he encountered around 10 to 20 people daily. J.G. stated that appellant was masked, but noted that he was working in a cluttered room that made social distancing difficult. In a separate e-mail of even date, the employing establishment indicated that it concurred with appellant's allegation that he contracted COVID-19 in the workplace and reported that several of appellant's coworkers tested positive for COVID-19.

In an August 27, 2020 memorandum of a telephone call (Form CA-110), appellant informed OWCP that he was hospitalized for six weeks and was unable to file his traumatic injury claim within 30 days. He noted that he returned to work on August 25, 2020 without restrictions.

By decision dated September 25, 2020, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted May 4, 2020 employment injury. OWCP noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of the accepted employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, 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 COP, 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

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *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). The Board notes that FECA Bulletin No. 20-05, *Federal Employees Contracting COVID-19 in Performance of Duty* (March 31, 2020), also provides that "If the employer supports the claim and that the exposure occurred, and the CA-1 is filed within 30 days, the employee is eligible to receive Continuation of Pay for up to 45 days."

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁷ *Supra* note 1 at § 8122(d)(3).

requirements for COP.⁸ Thus, there is no exception to the requirement that the claim be filed within 30 days of the employment injury.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period May 11 through July 28, 2020.

Appellant filed written notice of his traumatic injury (Form CA-1) on August 6, 2020. In an August 27, 2020 memorandum of a telephone call (Form CA-110), he explained that he was hospitalized for six weeks and was unable to timely file his traumatic injury claim within 30 days of the May 4, 2020 employment injury. By decision dated September 25, 2020, OWCP denied appellant's request for COP, as his claim was not filed within 30 days of the accepted May 4, 2020 employment injury. It noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of the accepted employment injury.

The Board notes that there is no provision in FECA for excusing a late filing regarding COP.¹⁰ Because appellant filed written notice of his traumatic injury claim (Form CA-1) on August 6, 2020, the Board finds that it was not filed within 30 days of the accepted May 4, 2020 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, appellant is not entitled to COP.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period May 11 through July 28, 2020.

⁸ *E.M.*, *supra* note 5.

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

¹⁰ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board