

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

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M.F., Appellant)	
)	
and)	Docket No. 22-0467
)	Issued: August 11, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
JAMES J. PETERS MEDICAL CENTER,)	
Bronx, NY, 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 February 9, 2022 appellant filed a timely appeal from a January 31, 2022 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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that a appellant submitted additional evidence following the January 31, 2022 decision. 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.*

ISSUE

The issue is whether appellant's traumatic injury claim (Form CA-1) was untimely filed, with regard to continuation of pay (COP).

FACTUAL HISTORY

On January 24, 2022 appellant, then a 31-year-old pharmacy technician, filed a traumatic injury claim (Form CA-1) alleging that on December 23, 2021 she was exposed to COVID-19 delivering medication while in the performance of duty. She related that she tested positive for COVID-19 on December 29, 2021. Appellant stopped work on December 23, 2021 and returned to work on January 10, 2022.

OWCP received a laboratory report dated December 31, 2021, which indicated that appellant's polymerase chain reaction (PCR) test was positive for severe acute respiratory syndrome (SARS)-COVID. It also received a laboratory report, indicating that appellant was administered a PCR test for COVID-19 on January 7, 2022, which was positive for COVID-19.

By decision dated January 31, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the December 23, 2021 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits. OWCP notified appellant that she could claim compensation for wage loss resulting from the decision by filing a claim for compensation (Form CA-7).

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 FECA.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 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

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).

date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

ANALYSIS

The Board finds that appellant's Form CA-1 was timely filed, with regard to COP.

Appellant filed a Form CA-1 on January 24, 2022 alleging injury due to exposure to COVID-19 on December 23, 2021. In a COP case, the Board has held that if the date of 30-day period in which to file notice of injury would have expired was a Saturday, the time for filing a notice of injury did not expire until the next business day, which was a Monday.⁷ In the present case, the 30th day following December 23, 2021 was Saturday, January 22, 2022. As appellant filed her claim on Monday, January 24, 2022, her CA-1 claim was timely filed.

The decision of the Office of Workers' Compensation Programs dated January 31, 2022 is reversed.

CONCLUSION

The Board finds that appellant's Form CA-1 was timely filed, with regard to COP.

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). *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *Gwen Cohen-Wise*, Docket No. 03-1021 (issued July 23, 2003).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 11, 2022
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