

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

_____)
A.J., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ROCKY MOUNTAIN VA MEDICAL CENTER,)
Aurora, CO, Employer)
_____)

Docket No. 22-0580
Issued: August 11, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On March 10, 2022 appellant filed a timely appeal from a February 14, 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.

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 February 7, 2022 appellant, then a 30-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she contracted COVID-19 on January 6, 2022 while in the performance

¹ 5 U.S.C. § 8101 *et seq.*

of duty. She noted that she began to develop symptoms at work on January 5, 2022 and continued to experience headaches, congestion, and fatigue while in recovery. On the reverse side of the claim form, the employing establishment asserted that appellant was not in the performance of duty when she contracted COVID-19. Appellant stopped work on January 6, 2022 and returned to work on January 12, 2022.

In a letter of controversion dated February 9, 2022, the employing establishment challenged appellant's claim, contending that she did not file a claim within 30 days of the alleged employment incident.

By decision dated February 14, 2022, OWCP denied appellant's claim for COP, finding that she did not report the injury on a form approved by OWCP within 30 days following the incident. It noted that the COP denial did not affect her entitlement to compensation benefits and did not preclude her from filing a claim for disability due to the alleged employment incident.

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.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

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.⁵

ANALYSIS

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

Appellant filed written notice of her traumatic injury (Form CA-1) on February 7, 2022. By decision dated February 14, 2022, OWCP denied her request for COP, as her claim was not filed within 30 days of the alleged January 6, 2022 employment incident. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the employment incident.

² *Supra* note 1 at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *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).

⁵ 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).

In a COP case, the Board has held that if the date of the 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.⁶ In the present case, the 30th day following January 6, 2022 was Saturday, February 5, 2022. Therefore, appellant had until Monday, February 7, 2022 to request COP. As she filed her claim on Monday, February 7, 2022, her Form CA-1 claim was timely filed with regard to COP.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: August 11, 2022
Washington, DC

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

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

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

⁶ *Gwen Cohen-Wise*, Docket No. 03-1021 (issued July 23, 2003).