

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

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<b>H.J., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 22-0772</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	<b>Issued: August 25, 2022</b>
<b>CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>DULLES INTERNATIONAL AIRPORT,</b>	)	
<b>Sterling, VA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 7, 2022 appellant filed a timely appeal from a March 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met her burden of proof to establish entitlement to continuation of pay (COP).

**FACTUAL HISTORY**

On February 1, 2022 appellant, then a 30-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2021 she contracted

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

COVID-19 through exposure while in the performance of duty. On the reverse side of the claim form her supervisor acknowledged that she was injured in the performance of duty. Appellant stopped work on December 16, 2021 and returned to work on January 2, 2022.

Appellant submitted a polymerase chain reaction (PCR) test result, collected on December 25, 2021, which revealed that she tested positive for COVID-19.

By decision dated March 7, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the December 16, 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 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 this title.<sup>2</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</sup>

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.<sup>5</sup>

### **ANALYSIS**

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

Appellant filed her Form CA-1 on February 1, 2022. By decision dated March 7, 2022, OWCP denied her request for COP, as her claim was not filed within 30 days of the accepted employment incident. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of an accepted employment injury.

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</sup> *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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>5</sup> 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).

Because appellant filed her Form CA-1 on February 1, 2022, the Board finds that it was not filed within 30 days of the December 16, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.<sup>6</sup> Accordingly, appellant is not entitled to COP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> *Id.*