United States Department of Labor Employees' Compensation Appeals Board

A.B., Appellant	
and	Docket No. 22-0956 Issued: December 12, 2022
U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer))))
Appearances: Appellant, pro se	Case Submitted on the Record

ORDER REMANDING CASE

Office of Solicitor, for the Director

Before:

ALEC J. KOROMILAS, Chief Judge VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On June 6, 2022 appellant filed a timely appeal from a January 26, 2022 merit decision and a May 31, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0956.

On October 11, 2021 appellant, then a 35-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 11, 2020¹ she contracted COVID-19 due to exposure to coworkers and customers who were infected with COVID-19. She stopped work on March 9, 2021. Appellant tested positive for the COVID-19 virus on March 12, 2021 and was hospitalized from March 15 to April 26, 2021 due to conditions secondary to the COVID-19 virus. She has not returned to work. With her claim, appellant submitted medical evidence and claims for wage-loss compensation (Form CA-7) commencing March 11, 2021.

By decision dated January 26, 2022, OWCP accepted appellant's claim for COVID-19.

By separate decision dated January 26, 2022, OWCP denied appellant's claim for continuation of pay (COP), finding that she did not report the injury on a form approved by OWCP

¹ On the Form CA-1 appellant indicated a date of injury of March 11, 2020. OWCP, however, accepted the date of injury as March 9, 2021.

within 30 days following the injury. It noted that the denial of COP did not preclude her from claiming wage loss due to the March 9, 2021 employment injury.

On February 7, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated May 31, 2022, OWCP determined that appellant had abandoned her request for an oral hearing. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain her failure to appear.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

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

FECA Bulletin No. 21-09 at subsection II.2. however provides that, "The FECA program considers COVID-19 to be a traumatic injury since it is contracted during a single workday or shift (see 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the medical evidence establishing the COVID-19 diagnosis as the Date of Injury since the precise time of transmission may not always be known due to the nature of the virus." In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded

² 5 U.S.C. § 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 762-64 (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).

⁶ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act of 2021 (ARPA) was signed into law. Pub. L. No. 117–2. OWCP issued FECA Bulletin No. 21-09 to provide guidance regarding the processing of COVID-19 FECA claims as set forth in the ARPA. Previously, COVID-19 claims under FECA were processed under the guidelines provided by FECA Bulletin No. 20-05 (issued March 31, 2020) and FECA Bulletin No. 21-01 (issued October 21, 2020). FECA Bulletin No. 21-09 supersedes FECA Bulletin Nos. 20-05 and 21-01.

for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP.⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the January 26, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.⁸

Issued: December 12, 2022 Washington, DC

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

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

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

⁷ See, e.g., Order Remanding Case, W.G., Docket No. 18-0451 (issued February 21, 2019) (The Board found that OWCP failed to properly develop the medical evidence by requesting the DMA to provide an impairment rating in accordance with the new guidance in FECA Bulletin No. 17-06 for consistently rating upper extremity impairments. The Board remanded the case for further development consistent with OWCP procedures in FECA Bulletin No. 17-06); Order Remanding Case, H.W., Docket No. 10-404 (issued September 28, 2011) (The Board remanded the case to OWCP for selection of a nother impartial medical specialist in a ccordance with its procedures).

 $^{^{8}}$ Given the disposition of the merit decision, the nonmerit issue is moot.