



## ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

## FACTUAL HISTORY

On August 18, 2022 appellant, then a 59-year-old pharmacist, filed a traumatic injury claim (Form CA-1) alleging that on May 26, 2022 she experienced COVID symptoms. She related that she tested with a binary test on May 28, 2022, as well as with PCR tests on June 1 and 3, 2022, all of which came back positive for COVID-19. Appellant stopped work on May 26, 2022 and returned on June 6, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty.

By decision dated August 24, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her May 26, 2022 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision concerned her entitlement to COP, that it did not affect her entitlement to other compensation benefits, and 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.<sup>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</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>6</sup>

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

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985). "

<sup>6</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).

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.”<sup>7</sup>

### ANALYSIS

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

The record reflects that appellant filed written notice of her traumatic injury (Form CA-1) on August 18, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was May 26, 2022.<sup>8</sup> By decision dated August 24, 2022, OWCP denied appellant’s request for COP, as her claim was not filed within 30 days of the accepted May 26, 2022 employment injury. As appellant filed written notice of her traumatic injury claim on August 18, 2022, more than 30 days after the accepted May 26, 2022 employment injury, the Board finds that appellant has not met her burden of proof to establish entitlement 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.

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<sup>7</sup> 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.

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 30, 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