

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP) for the period March 11 through April 24, 2020.

FACTUAL HISTORY

On March 11, 2020 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 10, 2020 she injured both arms when answering telephones and typing forms while in the performance of duty. Regarding the nature of the claimed injury, she indicated, “[a]ll other occupational illnesses[,] [b]oth lower arms.” Appellant checked a box on the form indicating that she was requesting COP. She stopped work on March 11, 2020.

In an accompanying statement, appellant asserted that she felt a tingling sensation in her arms on March 10, 2020 after she completed forms. She submitted a March 24, 2020 duty status report (Form CA-17) from Dr. Richard Morgenstern, an attending Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome and right shoulder tendinitis.

In an April 1, 2020 development letter, OWCP requested that appellant clarify whether she was claiming a traumatic injury or an occupational disease, and explained that a traumatic injury referred to an injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift, whereas an occupational disease referred to an injury produced by employment over a period longer than a single workday or shift.⁴ It afforded her 30 days to submit the requested evidence.

On April 3, 2020 OWCP received a statement, dated March 26, 2020, in which appellant discussed her interactions with OWCP officials and her attempts to have her claim approved. Appellant submitted additional medical evidence.

By decision dated May 4, 2020, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish the factual component of fact of injury. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.⁵

On May 12, 2020 OWCP received a statement, dated April 16, 2020, in which appellant asserted that her claimed upper extremity conditions were caused by performing her work duties over a period of time. Appellant explained that these work duties included preparing mail in the cage for other carriers, delivering mail on a P.O. Box loop, assisting clerks at the front window, answering telephones and customer complaints, answering online customer inquiries/complaints, and typing on the computer to assist customers in resolving their issues. She indicated that on

⁴ See 20 C.F.R. §§ 10.5(q), (ee); *R.V.*, Docket No. 18-1037 (issued March 26, 2019); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁵ In a May 11, 2020 letter, the employing establishment advised appellant that the COP she received would be changed to annual leave or leave without pay.

February 27, 2019 she had experienced upper extremity symptoms, which were similar to those she experienced on March 1, 2020, *i.e.*, numbness and tingling in her arms, hands, and fingers.

On May 13, 2020 OWCP received a statement, dated May 8, 2020, in which appellant provided additional details of the work duties she performed over time, noting that she believed they contributed to her claimed condition.

On May 13, 2020 appellant requested reconsideration of the May 4, 2020 decision. She submitted additional medical evidence, including an April 27, 2020 report from Dr. Morgenstern who diagnosed right shoulder bicipital tendinitis, right shoulder sprain, bilateral wrist sprains, and bilateral carpal tunnel syndrome. Dr. Morgenstern discussed the work duties that appellant had performed over time and opined that her diagnosed upper extremity conditions were related to these work duties.

By decision dated July 14, 2020, OWCP accepted employment factors in the form of the work duties appellant performed over time, including handling mail and performing clerical duties. It denied her claim for an employment-related condition, noting that it was modifying its May 4, 2020 decision to reflect that the basis for the denial was her failure to submit medical evidence establishing causal relationship between the diagnosed conditions and the accepted employment factors.

On July 29, 2020 appellant requested reconsideration of the July 14, 2020 decision and submitted additional medical evidence.

By decision dated December 7, 2020, OWCP vacated its July 14, 2020 decision.

By separate decision of even date, OWCP accepted appellant's occupational disease claim for right shoulder bicipital tendinitis, right shoulder joint sprain, bilateral wrist sprains, and aggravation of preexisting carpal tunnel syndrome. It found that she was not eligible for COP because her claim had been converted from a traumatic injury claim to an occupational disease claim. OWCP advised that a separate COP decision would be issued with appeal rights.

By a third decision dated December 7, 2020, OWCP denied appellant's request for COP. It noted, "Your claim has been converted from a traumatic injury claim to an occupational disease claim. As a result, you are not eligible for [COP]."

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.⁶ This latter section provides that written notice of injury must be given within 30 days.⁷ The context of section 8122 makes clear that this means within 30 days of the injury.⁸

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 a 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.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to COP for the period March 11 through April 24, 2020.

Appellant initially filed a Form CA-1 for a traumatic injury, but she later explained in several statements that her claimed upper extremity injury was caused by performing work duties, including typing, over a period of time. As her injuries occurred over more than a single workday or shift, the Board finds that OWCP properly determined that appellant's claim was one for an occupational disease rather than a traumatic injury.¹⁰ Consequently, appellant is not eligible for COP.¹¹

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 for the period March 11 through April 24, 2020.

⁶ *Supra* note 2 at § 8118.

⁷ *Id.*

⁸ *D.P.*, Docket No. 21-0596 (issued August 31, 2021); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *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).

⁹ 20 C.F.R. § 10.205(a). *See also T.A.*, Docket No. 21-0041 (issued May 3, 2021); *T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

¹⁰ 20 C.F.R. §§ 10.5(q), 10.5(ee); *see also A.B.*, Docket No. 19-0842 (issued September 17, 2019); *J.F.*, Docket No. 10-2134 (issued July 6, 2011).

¹¹ *See S.G.*, Docket No. 20-0538 (issued December 9, 2020); *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.V.*, Docket No. 15-0942 (issued March 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the December 7, 2020 decision of the Office of Workers' Compensation Programs regarding the denial of COP is affirmed.

Issued: January 12, 2022
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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