

exposed to an infected patient or coworker while providing care for infusion patients while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted her request for COP contending that notice of the injury had not been reported within 30 days, noting that the injury claim was not received until February 17, 2022.² Appellant stopped work on January 3, 2022 and returned to work on January 7, 2022.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) COVID-19 test dated January 3, 2022, which indicated that she was positive for COVID-19.

By decision dated February 22, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the December 30, 2021 employment incident on a form approved by OWCP within 30 days, as required. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to the alleged employment injury.

LEGAL PRECEDENT

Section 8118 of FECA³ provides for payment of continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

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.⁶

ANALYSIS

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

Appellant filed written notice of her traumatic injury (Form CA-1) on February 17, 2022. By decision dated February 22, 2022, OWCP denied her request for COP, as her claim was not

² OWCP processed the claim as a short form closure.

³ *Supra* note 1 at § 8118.

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

⁶ 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).

filed within 30 days of the alleged December 30, 2021 employment incident. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the employment incident. As appellant did not file written notice of her injury until February 17, 2022, the Board finds that she did not file her claim within 30 days of the December 30, 2021 employment incident. Accordingly, she 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.

Appellant did not submit written notice of injury on an approved form until February 17, 2022 more than 30 days after the December 30, 2021 employment injury, when she submitted a Form CA-1. Therefore, the Board finds that she 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 for COP.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2022 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 20, 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