

<sup>2</sup> The Board notes that following the February 7, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On February 2, 2022 appellant, then a 60-year-old supply clerk, filed a traumatic injury claim (Form CA-1) alleging that he contracted COVID-19 and pneumonia on November 24, 2021 while in the performance of duty. He noted that he felt sick at work on Monday, November 22, 2021 and was ill through December 6, 2021. On the reverse side of the claim form, the employing establishment asserted that appellant was not in the performance of duty when he contracted COVID-19 as appellant was unable to identify where he contracted it from. He stopped work on November 24, 2021 and return to work on December 7, 2021.

By decision dated February 7, 2022, OWCP denied appellant's claim for COP, finding that he did not report the injury on a form approved by OWCP within 30 days following the injury. It noted that the denial of COP did not preclude him from claiming disability due to the alleged November 24, 2021 employment incident.

### **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>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>

### **ANALYSIS**

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

Appellant filed written notice of his traumatic injury (Form CA-1) on February 2, 2022. By decision dated February 7, 2022, OWCP denied appellant's request for COP, as his claim was not filed within 30 days of the alleged November 24, 2021 employment incident. It noted that the

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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).

denial of COP did not preclude him from filing a claim for disability due to the employment incident. As appellant did not file written notice of his injury until February 2, 2022, the Board finds that he did not file his claim within 30 days of the November 24, 2021 employment incident. 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 his burden of proof to establish entitlement to COP.

### **ORDER**

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

Issued: June 16, 2022  
Washington, DC

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

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

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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