

**United States Department of Labor
Employees' Compensation Appeals Board**

J.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Gulf Shores, AL, Employer)
_____)

**Docket No. 22-0666
Issued: October 26, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 29, 2022 appellant filed a timely appeal from a March 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

¹ On her application for review (AB-1 Form), appellant indicated that she was appealing from a March 28, 2022 OWCP decision. The Board notes, however, that there is no OWCP decision dated March 28, 2022. The last final adverse OWCP decision of record issued within 180 days from the date of docketing of the current appeal is dated March 14, 2022. See 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

On March 8, 2022 appellant, then a 52-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on January 3, 2022 she contracted COVID-19 after being in contact with a COVID-19 positive supervisor and clerk while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, D.N., controverted appellant's request for COP because notice of the injury was reported more than 30 days after the date of the claimed injury. Following the end of his work shift on January 3, 2002, appellant did not return to work until January 10, 2022.

In support of her claim, appellant submitted a rapid antigen laboratory test result, collected on January 5, 2022, which revealed that she tested positive for COVID-19.

OWCP, by decision dated March 14, 2022, denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the date of the claimed employment injury.

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.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

² *Id.* at § 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).

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.”⁶

ANALYSIS

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

On March 8, 2022 appellant filed a claim for a January 3, 2022 traumatic injury. He stopped work on January 3, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was January 3, 2022.⁷ As appellant filed her Form CA-1 on March 8, 2022, more than 30 days after the January 3, 2022 date of injury, the Board finds that she has not met her burden of proof.

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.

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.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 26, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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