



performance of duty. She noted that she filed an Occupational Safety and Health Administration (OSHA) Injury and Illness Incident Report (OSHA Form 301) on January 26, 2022. Appellant stopped work on the date of injury and returned to work on January 6, 2022.

In a February 15, 2022 statement, appellant requested authorization of COP and contended that her request was filed in a timely manner. She explained that her OSHA Form 301 was completed and filed on January 25, 2022. Appellant further explained that the form was signed by her supervisor and OSHA on January 26, 2022. She believed that her traumatic injury (Form CA-1) was filed on January 25, 2022.

Appellant submitted a copy of the OSHA Form 301, which indicated that it was signed by an OSHA record keeper on January 26, 2022.

Appellant also submitted a polymerase chain reaction (PCR) laboratory test result, collected on December 27, 2021, which indicated that she tested positive for COVID-19.

OWCP, by decision dated February 22, 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. It noted 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 this title.<sup>2</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</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>5</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 CFR 10.5(ee)), and considers the date of last exposure prior to the medical evidence

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>5</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>6</sup>

### ANALYSIS

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

Appellant filed written notice of her traumatic injury (Form CA-1) on February 17, 2022, alleging that on December 27, 2021 she contracted COVID-19 while in the performance of duty. She stopped work on December 27, 2021 and returned to work on January 6, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 27, 2021.<sup>7</sup> As appellant did not file written notice of her injury until February 17, 2022, more than 30 days after the December 27, 2021 date of injury, the Board finds that appellant 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.

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<sup>6</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>7</sup> *Id.*

**ORDER**

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

Issued: October 26, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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