

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

R.M., Appellant	)	
	)	
and	)	<b>Docket No. 21-0576</b>
	)	<b>Issued: September 28, 2022</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
CHICAGO, IL, Employer	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On March 2, 2021 appellant filed a timely appeal from a February 24, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0576.

On May 1, 2020 appellant, then a 52-year-old postal carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 14, 2020 she contracted COVID-19 while in the performance of duty. She further noted that she began to feel sick on March 20, 2020 and was diagnosed on April 9, 2020. On the reverse side of the claim form, the employing establishment controverted the claim asserting that due to the nature of appellant's injury, she could have been exposed outside of carrying out her official duties. Appellant stopped work on March 24, 2020.

In support of her claim, appellant submitted a laboratory test result, dated April 12, 2020, which revealed that she tested positive for COVID-19.

In a statement dated May 8, 2020, appellant indicated that she was unsure how she contracted COVID-19, but believed she was exposed via direct contact with postal customers. She noted that she sought treatment at an urgent care facility on March 29, 2020 and was diagnosed at the emergency room on April 9, 2020.

On May 11, 2020 OWCP received a copy of an undated Certification of Health Care Provider for Employee's Serious Health Condition form by Dr. David I. Vanderberg, an internal medicine specialist, indicating that appellant was diagnosed with COVID-19 on April 9, 2020 and that she was disabled from work between March 30 and May 11, 2020.

In a development letter dated July 24, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

By decision dated August 6, 2020, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the alleged March 14, 2020 employment injury. By letter of even date, it provided her with an additional 30 days to submit evidence in support of the underlying claim.

Appellant submitted a new statement dated August 19, 2020 asserting that she was exposed to COVID-19 while working inside a postal station answering the phone and addressing customer complaints at the retail window.

On August 28, 2020 appellant requested reconsideration of the August 6, 2020 decision.

By decision dated September 25, 2020, OWCP declined appellant's request for reconsideration of the merits of her claim, finding that she neither raised substantial legal questions, nor submitted any new or relevant evidence.

Thereafter, in a decision dated January 22, 2021, OWCP denied appellant's underlying claim, finding that the evidence submitted failed to establish that her COVID-19 diagnosis was causally related to the accepted factors of her federal employment.

Following additional requests for reconsideration and further denials,<sup>1</sup> OWCP ultimately accepted appellant's claim for COVID-19 by decision dated March 22, 2021. In a separate decision dated March 23, 2021, it continued to deny appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted March 14, 2020 employment injury. OWCP noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

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

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<sup>1</sup> On February 4, 2021 appellant requested reconsideration of OWCP's January 22, 2021 decision. By decision dated February 9, 2021, OWCP denied modification of the January 22, 2021 decision. Appellant again requested reconsideration on February 20, 2021, which OWCP declined by decision on February 24, 2021.

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 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the medical evidence 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>

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP.<sup>7</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

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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).

<sup>6</sup> FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 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> *See e.g., Order Remanding Case, W.G.*, Docket No. 18-0451 (issued February 21, 2019) (The Board found that OWCP failed to properly develop the medical evidence by requesting the DMA to provide an impairment rating in accordance with the new guidance in FECA Bulletin No. 17-06 for consistently rating upper extremity impairments. The Board remanded the case for further development consistent with OWCP procedures in FECA Bulletin No. 17-06); *Order Remanding Case, H.W.*, Docket No. 10-404 (issued September 28, 2011) (The Board remanded the case to OWCP for selection of another impartial medical specialist in accordance with its procedures).

**IT IS HEREBY ORDERED THAT** the March 23, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 28, 2022  
Washington, D.C.

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board