

on June 19, 2020 and a Form CA-1 was to be completed. He stopped work on June 19, 2020 and returned to work on August 17, 2020.

In an undated letter received by OWCP on December 22, 2021, appellant's representative contended that his assignment was high-risk employment and that he worked in the emergency room from March 20 through June 18, 2020. He asserted that appellant had notified his supervisor of his COVID-19 symptoms on June 18, 2020 and that on June 19, 2020 he was admitted to the hospital with a diagnosis of COVID-19. Appellant was intubated and in a coma for three weeks.

In a development letter dated December 22, 2020, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and details regarding appellant's alleged COVID-19 exposure. It afforded both parties 30 days to submit the necessary evidence.

In a January 12, 2021 memorandum, appellant's supervisor, S.G., responded to OWCP's development questionnaire. She noted that beginning on March 30, 2020 he was assigned to the emergency department for administrative duties at the front window, behind the glass, with access to personal protective equipment. Appellant's last day working in the emergency department was May 22, 2020. Beginning on May 26, 2020 he was assigned administrative duties in the cardiology clinic that did not include patient contact. On June 19, 2020 appellant utilized "family friendly leave" and on June 22, 2020 utilized sick leave. On July 7, 2020 he was "coded as COVID-19 quarantine paid leave (COQB) for tracking purposes" and was awarded 80 hours for weather and safety leave. Appellant returned to regular-duty work on August 17, 2020.

In a second development letter dated February 19, 2021, OWCP advised appellant that it had not received a response to its initial development letter. It afforded him an additional 30 days to submit the requested information.

In a March 16, 2021 letter, OWCP noted that appellant's claim would be reviewed under the provisions of the American Rescue Plan Act (ARPA) of 2021.²

On June 19, 2020 appellant underwent a COVID-19 polymerase chain reaction (PCR) test, which was reported to be positive on June 22, 2020. A hospital discharge summary dated July 19, 2020 indicated that he was admitted to the hospital on June 23, 2020 after a positive COVID-19 test on June 19, 2020. Appellant was intubated on June 27, 2020, extubated on July 13, 2020, and discharged on July 19, 2020.

By decision dated April 15, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted June 18, 2020 employment injury. OWCP noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of the accepted employment injury.

² Pub L. No. 117-2 (March 11, 2021).

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 this title.³ 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

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 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."⁷

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

³ 5 U.S.C. § 8118(a).

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).

⁷ 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 Bulletins 20-05 and 21-01.

for COP.⁸ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 15, 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 27, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁸ 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).