

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

C.V., Appellant)	
)	
and)	Docket No. 22-0407
)	Issued: September 29, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 24, 2022 appellant, through counsel, filed a timely appeal from a January 10, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0407.

On May 15, 2020 appellant, then a 52-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2020 he contracted COVID-19 while in the performance of duty. OWCP accepted the claim for novel coronavirus, COVID-19.

A May 8, 2020 discharge summary indicated that appellant was intubated on April 12, 2020 at one hospital after which he was transferred to another hospital on April 15, 2020 for further treatment of COVID-19.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

On June 17, 2021 appellant filed a claim for compensation (Form CA-7) due to disability from work for the period May 20, 2020 to April 5, 2021. The employing establishment indicated on the form that he had received COVID-19 leave from April 4 through 17, 2020.

By decision dated June 28, 2021, OWCP found that appellant was not entitled to COP as he had not reported his injury on an OWCP-approved form within 30 days of his accepted April 3, 2020 employment injury. It noted that the denial of COP did not affect his entitlement to compensation benefits.

On October 5, 2021 appellant, through counsel, requested reconsideration. Counsel asserted that hospital records and medical evidence supported that appellant was unable to report his injury within 30 days because he was in the hospital in a medically-induced coma.

In support of his reconsideration request, appellant submitted reports from his hospitalization. In a note dated April 13, 2020, Dr. Kenneth Rosplock, a Board-certified internist and nephrologist, diagnosed COVID-19. He diagnosed acute renal failure, hypotension, and acidosis and noted that appellant had been placed on mechanical ventilation on April 12, 2020. On May 8, 2020 appellant was discharged for acute rehabilitation.

By decision dated January 10, 2022, OWCP denied modification of its June 28, 2021 decision.

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.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 CFR 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

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.⁷ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the January 10, 2022 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 29, 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

⁶ 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.

⁷ 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).