

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

_____)	
J.B., Appellant)	
)	
and)	Docket No. 22-0642
)	Issued: September 27, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
CENTRAL ARKANSAS VETERANS)	
HEALTHCARE SYSTEM,)	
North Little Rock, AR, Employer)	
_____)	

Appearances:
Appellant, pro se
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 March 27, 2022 appellant filed a timely appeal from a February 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0642.

On February 11, 2022 appellant, then a 56-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 31, 2021 she contracted COVID-19 when she was exposed to patients and co-workers with COVID-19 while in the performance of duty. On the reverse side of the claim form, C.J., an employing establishment supervisor, confirmed that appellant's injury occurred while in the performance of duty. Appellant stopped work on January 2, 2022 and returned on January 10, 2022.

In support of her claim, appellant submitted a January 19, 2022 medical record noting that she had been placed in COVID monitoring for possible COVID-19 on December 31, 2021. She returned to work on January 11, 2022 with a mask and continued monitoring. The report also indicated that appellant had been quarantined by employee health from December 31, 2021 through January 10, 2022. It was signed by Rebecca Wilson, registered nurse, and Meredith Morton, advanced practical nurse, both of employee health.

OWCP received a laboratory test result for a polymerase chain reaction (PCR) test dated January 2, 2022 that noted findings indicative of SARS-COVID which required clinical correlation.

By decision dated February 22, 2022, OWCP denied her claim for COP, finding that she did not report the injury on a form approved by OWCP within 30 days following the 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 this title.¹ This latter section provides that written notice of injury shall be given within 30 days.² The context of section 8122 makes clear that this means within 30 days of the injury.³

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.⁴

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."⁵

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

¹ 5 U.S.C. § 8118(a).

² *Id.* at § 8122(a)(2).

³ *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).

⁴ 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).

⁵ 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 Bulletins 20-05 and 21-01.

for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 22, 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 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

⁶ 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).