

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

_____)	
L.G., Appellant)	
)	
and)	Docket No. 22-0676
)	Issued: September 30, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
BUFFALO VA MEDICAL CENTER,)	
Buffalo, NY, 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 16, 2022 appellant filed a timely appeal from a January 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0676.

On January 23, 2022 appellant, then a 34-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on December 22, 2021 she was experiencing chills, fever and body aches while in the performance of duty. She related that she underwent weekly COVID-19 testing and on December 31, 2021, she tested positive for COVID-19. On the reverse side of the claim form, an employing establishment supervisor, K.Z., controverted the claim asserting that appellant was not working on the date of the alleged injury as it was a holiday, and that she did not notify her supervisor of her test results until January 1, 2022. Appellant stopped work on January 2, 2022 and returned on January 9, 2022.

By decision dated January 26, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her claimed December 22, 2021 injury within 30 days of the date of injury. It noted that the denial of COP did not preclude her from claiming disability due to the alleged December 22, 2021 employment injury by filing a claim for compensation (Form CA-7).

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

¹ *Id.* at § 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 (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.

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).

IT IS HEREBY ORDERED THAT the January 26, 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 30, 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