



she contracted COVID-19 after providing services to infected inmates while in the performance of duty. She stopped work on January 10, 2022 and returned to work on January 25, 2022.

Appellant submitted a rapid antigen test result, collected on January 12, 2022, which revealed that she tested positive for COVID-19.

By decision dated February 14, 2022, 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 accepted January 7, 2022 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other benefits. OWCP notified appellant that she could claim compensation for wage loss resulting from the decision by filing a claim for compensation (Form CA-7).

On February 18, 2022 appellant requested reconsideration. In a statement of even date, she indicated that the last day she worked at the employing establishment was January 7, 2022. Appellant reported contacting her physician on January 10, 2022 and had her appointment on January 12, 2022. She had a positive COVID-19 test on January 12, 2022 and was off work from January 10 through 24, 2020. Appellant asserted that she was not aware that she could file an OWCP claim or that COP was an option until receiving an email from the safety department dated January 27, 2022 that she read on February 2, 2022. She advised that since she was out of the office from January 10 through 25, 2022, she was behind in her workflow. Once appellant opened the email from the safety department, she began to gather the necessary information to file a claim through the Employees Compensation Operations Management Portal (ECOMP) website. She also submitted documentation indicating that the safety department e-mail was delivered to her on January 27, 2022 and read by her on February 2, 2022.

By decision dated March 23, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

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.<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>

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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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985). The Board notes that FECA Bulletin No. 20-05, *Federal Employees Contracting COVID-19 in Performance of Duty* (issued March 31, 2020), also provides that "If the employer supports the claim and that the exposure occurred, and the CA-1 is filed within 30 days, the employee is eligible to receive Continuation of Pay for up to 45 days."

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>

The Board has held that section 8122(d)(3) of FECA,<sup>6</sup> which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for COP.<sup>7</sup> Thus, there is no exception to the requirement that the claim be filed within 30 days of the employment injury.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

Appellant filed written notice of her traumatic injury (Form CA-1) on January 7, 2022. By decision dated February 14, 2022, OWCP denied her request for COP, as her claim was not filed within 30 days of the January 7, 2022 employment injury. It noted that the denial of COP did not preclude appellant from filing a Form CA-7 for disability due to the effects of an accepted employment injury.

The Board notes that there is no provision in FECA for excusing a late filing regarding COP.<sup>9</sup> Because appellant filed written notice of her Form CA-1 on February 7, 2022, the Board finds that it was not filed within 30 days of the January 7, 2022 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, she is not entitled to COP.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>10</sup>

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<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).

<sup>6</sup> *Supra* note 1 at § 8122(d)(3).

<sup>7</sup> *E.M.*, *supra* note 4.

<sup>8</sup> *Id.*; *Dodge Osborne*, 44 ECAB 849 (1993).

<sup>9</sup> *Id.*; *Dodge Osborne*, *id.*

<sup>10</sup> *Supra* note 1 at § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>11</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>12</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>13</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>14</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

Appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. With her timely request for reconsideration, she submitted a statement in support of her request for COP. Appellant indicated that the last day she worked was January 7, 2022. She reported contacting her physician on January 10, 2022 and had a virtual visit on January 12, 2022. Appellant had a positive COVID-19 test on January 12, 2022 and was off work from January 10 through 24, 2020. She asserted that she was not aware that she could file an OWCP claim or that COP was an option until receiving an email from the safety department dated January 27, 2022. Appellant advised that she was out of the office from January 10 through 25, 2022 and once she opened the email she began to gather the necessary information to file a claim through the ECOMP website. However, her reconsideration request does not advance a new legal argument not previously considered, nor show that OWCP erroneously applied or interpreted a specific point of law. The Board finds that the arguments made by appellant on reconsideration were cumulative, duplicative, or repetitive in nature and were insufficient to warrant reopening the claim for merit

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<sup>11</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also K.L.*, Docket No. 17-1479 (issued December 20, 2017); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>12</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>13</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>14</sup> *Id.* at § 10.608(b); *M.S.*, Docket No. 19-0291 (issued June 21, 2019); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

review.<sup>15</sup> Thus, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>16</sup>

The Board further finds that appellant did not submit relevant and pertinent new evidence in support of her reconsideration request. With her February 18, 2022 request for reconsideration, she provided a “properties document” that displayed that an email was delivered on January 27, 2022 and read on February 2, 2022. The Board notes that the submission of evidence that does not address the particular underlying issue involved does not constitute a basis for reopening a case.<sup>17</sup> As appellant failed to provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that OWCP properly determined that appellant was not entitled to further review of the merits of her claim pursuant to any of the three requirements under 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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<sup>15</sup> *J.V.*, Docket No. 19-1554 (issued October 9, 2020); *see T.B.*, Docket No. 16-1130 (issued September 11, 2017); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>16</sup> *G.Q.*, Docket No. 18-1697 (issued March 21, 2019); *Alan G. Williams*, 52 ECAB 180 (2000).

<sup>17</sup> *L.C.*, Docket No. 19-0503 (issued February 7, 2020); *Alan G. Williams, id.*; *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>18</sup> *A.F.*, Docket No. 18-1154 (issued January 17, 2019); *see A.R.*, Docket No. 16-1416 (issued April 10, 2017); *A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 14 and March 23, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 17, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board