

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

N.C., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS, VA)
NORTHER INDIANA HEALTH CARE)
SYSTEM, Fort Wayne, IN, Employer)

**Docket No. 22-1362
Issued: April 3, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 26, 2022 appellant filed a timely appeal from an August 24, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On August 8, 2022 appellant, then a 51-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 4, 2022 she contracted COVID-19 while in the performance of duty. She indicated that she had “days away” from work but did not indicate when she stopped work. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty, but did not indicate whether she stopped work.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) laboratory test result, collected on July 7, 2022, which revealed that she tested positive for COVID-19.

By decision dated August 24, 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 date of her alleged July 4, 2022 employment injury. It further noted that the decision affected only her entitlement to COP, and did not affect her entitlement to other compensation benefits.

LEGAL PRECEDENT

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 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

³ *Supra* note 1 at § 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, 763-64 (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).

(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

ANALYSIS

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

Appellant filed her Form CA-1 on August 8, 2022. The record does not indicate the date she stopped work. By decision dated August 24, 2022, OWCP denied her request for COP, as her claim was not filed within 30 days of the alleged July 4, 2022 employment injury.

Because appellant filed her Form CA-1 on August 8, 2022, the Board finds that it was not filed within 30 days of her alleged July 4, 2022 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.⁸ Accordingly, appellant is not entitled to COP.

CONCLUSION

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

⁷ 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 Bulletin Nos. 20-05 and 21-01.

⁸ *Supra* note 6.

IT IS HEREBY ORDERED THAT the August 24, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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