

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

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<b>R.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0283</b>
	)	<b>Issued: December 8, 2023</b>
<b>DEPARTMENT OF THE TREASURY,</b>	)	
<b>INTERNAL REVENUE SERVICE,</b>	)	
<b>Austin, TX, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 16, 2022 appellant filed a timely appeal from a July 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0283.

On July 7, 2022 appellant, then a 67-year-old tax examiner, filed a traumatic injury claim (Form CA-1) alleging that on May 13, 2022 he contracted COVID-19 and then developed pneumonia as a result of working in close contact with infected individuals while in the performance duty. On the reverse side of the claim form, J.H., an employing establishment supervisor controverted his request for continuation of pay (COP) because the claim was not filed within 30 days of the injury. Appellant stopped work on May 16, 2022 and returned to work on June 2, 2022.

In support of his claim, appellant submitted a polymerase chain reaction (PCR) test result dated May 17, 2022, which indicated that he was positive for COVID-19.

In a note dated May 17, 2022, Dakota Rolisonlove, a registered medical assistant, held appellant off work.

A report of chest x-ray dated May 22, 2022 revealed hazy airspace opacities in the right lower lobe consistent with infection, a mildly enlarged heart, and elevation of the right hemidiaphragm.

In a note dated May 25, 2022, Stephanie Crimi, a registered nurse, released appellant to return to work, effective June 2, 2022.

By decision dated July 11, 2022, OWCP denied appellant's claim for COP, finding that he had failed to report the May 13, 2022 employment injury on a form approved by OWCP within 30 days, as required. It advised him that the denial of COP did not affect his entitlement to other compensation benefits.

The Board, having duly considered the 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.<sup>1</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>3</sup>

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>4</sup>

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 C.F.R. § 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."<sup>5</sup>

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<sup>1</sup> 5 U.S.C. § 8118(a).

<sup>2</sup> *Id.* at § 8122(a)(2).

<sup>3</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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>4</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); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>5</sup> 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.

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.<sup>6</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the July 11, 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: December 8, 2023  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *Order Remanding Case, P.A.*, Docket No. 23-0165 (issued June 14, 2023); *Order Remanding Case, B.B.*, Docket No. 23-0124 (issued January 25, 2023); *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022); *Order Remanding Case, T.S.*, Docket No. 22-0830 (issued December 19, 2022); *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022).