



## ISSUE

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

## FACTUAL HISTORY

On June 22, 2022 appellant, then a 54-year-old air traffic control specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2022 he contracted COVID-19 while in the performance duty. On the reverse side of the claim form the employing establishment controverted his request for COP because notice of the injury had not been reported within 30 days, noting that the injury claim was not received until June 22, 2022.<sup>3</sup> Appellant stopped work at 5:30 a.m. on May 12, 2022 and returned to work on May 26, 2022.<sup>4</sup>

In support of his claim, appellant submitted a polymerase chain reaction (PCR) test result dated May 16, 2022, which indicated a positive result for COVID-19.

By decision dated June 28, 2022, OWCP denied appellant's claim for COP, finding that he had failed to report the May 11, 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 compensation, and that he could, therefore, file a Form CA-7 for lost wages due to the employment injury.<sup>5</sup>

OWCP thereafter received copies of text messages dated May 22, 2022 between appellant and B.W., an employing establishment manager, wherein appellant asked whether B.W. had "started on my COP."

In a subsequent statement dated October 20, 2022, appellant indicated that he notified B.W. of his COVID-19 diagnosis on May 16, 2022 and that he texted him to follow up on the claim on May 22, 2022. He further related that he had a prior claim for COVID-19 in November 2021, and his supervisor at that time submitted a Form CA-1 on his behalf. Appellant indicated that on June 22, 2022 he learned that B.W. never submitted a Form CA-1. On that basis, he immediately signed into the Employees' Compensation Operations & Management Portal and filled out a Form CA-1.

In a statement dated October 30, 2022, B.W. indicated that on May 16, 2022 appellant notified him that he had tested positive for COVID-19 and, on May 22, 2022 B.W. advised

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<sup>3</sup> OWCP processed the claim as a short form closure.

<sup>4</sup> Appellant has a prior November 4, 2021 traumatic injury claim for COVID-19. OWCP assigned the claim OWCP File No. xxxxxx174 and designated it as a short form closure. It has not administratively combined this file with the current claim.

<sup>5</sup> On June 29, 2022 appellant requested reconsideration of the June 28, 2022 decision. In support of his request, he submitted a statement which indicated that he filed an Occupational Safety and Health Administration (OSHA) illness and injury report (OSHA 301) on May 15, 2022 describing his "work-related injury and how it happened." On July 13, 2022 appellant requested to withdraw his June 29, 2022 reconsideration request. By letter dated August 11, 2022, OWCP granted his request.

appellant that he had “taken care of” filing his claim for COP. Thereafter, on June 22, 2022, he learned that he had mistakenly filed an OSHA-301 form, not Form CA-1. B.W. requested that appellant’s leave be restored in light of his error.

On November 4, 2022 appellant requested reconsideration of OWCP’s June 28, 2022 decision.

By decision dated January 13, 2023, OWCP accepted appellant’s claim for COVID-19. In a separate decision of even date, it denied modification of its June 28, 2022 denial of COP, finding that his last work exposure occurred on May 11, 2022 and that he had failed to report the May 11, 2022 employment injury on a form approved by OWCP within 30 days, as required.

### **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.<sup>6</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>7</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>8</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>9</sup>

FECA Bulletin No. 21-09 at subsection II.2. 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>10</sup>

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<sup>6</sup> 5 U.S.C. § 8118(a).

<sup>7</sup> *Id.* at § 8122(a)(2).

<sup>8</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>9</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>10</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.

### ANALYSIS

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

The record reflects that appellant filed written notice of his traumatic injury on a Form CA-1 on June 22, 2022 alleging that on May 11, 2022 he was exposed to COVID-19 while in the performance of duty. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case OWCP found was May 11, 2022.<sup>11</sup> As appellant filed his Form CA-1 on June 22, 2022 more than 30 days after the May 11, 2022 date of injury, the Board finds that he has not met his burden of proof.

The Board, therefore, finds that OWCP properly denied COP as appellant did not file his claim within the requisite 30 days from the date of injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### CONCLUSION

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

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<sup>11</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2023  
Washington, DC

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

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

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