# United States Department of Labor Employees' Compensation Appeals Board

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J.W., Appellant and U.S. POSTAL SERVICE, POST OFFICE, Richford, VT, Employer

Docket No. 23-0685 Issued: December 18, 2023

Appearances: Appellant, pro se Office of Solicitor, for the Director Case Submitted on the Record

## **DECISION AND ORDER**

Before: ALEC J. KOROMILAS, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge JAMES D. McGINLEY, Alternate Judge

#### **JURISDICTION**

On April 20, 2023 appellant filed a timely appeal from a March 15, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

#### <u>ISSUE</u>

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

<sup>&</sup>lt;sup>1</sup> The Board notes that following the March 15, 2023 decision, OWCP received additional evidence. 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*.

<sup>&</sup>lt;sup>2</sup> 5 U.S.C. § 8101 *et seq*.

#### FACTUAL HISTORY

On March 3, 2023 appellant, then a 53-year-old clerk stenographer, filed a traumatic injury claim (Form CA-1) alleging that on January 19, 2023 she tripped over a stool fracturing her foot/ankle while in the performance of duty. She stopped work on February 27, 2023. OWCP accepted the claim for displaced fracture of the neck of the right talus.

By decision dated March 15, 2023, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her accepted January 19, 2023 employment injury. It noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of her accepted injury.

#### <u>LEGAL PRECEDENT</u>

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>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</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>6</sup>

#### <u>ANALYSIS</u>

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

Appellant filed her Form CA-1 on March 3, 2023. As this was more than 30 days after the claimed employment injury, the Board finds that it untimely, pursuant to sections 8118(a) and

<sup>&</sup>lt;sup>3</sup> *Id.* at § 8118(a).

<sup>&</sup>lt;sup>4</sup> *Id.* at § 8122(a)(2).

<sup>&</sup>lt;sup>5</sup> *T.S.*, Docket No. 22-1117 (issued March 30, 2023); *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>&</sup>lt;sup>6</sup> 20 C.F.R. § 10.205(a)(1-3); *see also T.S., id.*; *X.M.*, Docket No. 22-0271 (issued February 28, 2023); *G.L.*, Docket No. 22-0490 (issued August 2, 2022); *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).

8122(a)(2) of FECA.<sup>7</sup> As such, appellant has not met her burden of proof to establish entitlement to COP.

## **CONCLUSION**

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

### <u>ORDER</u>

**IT IS HEREBY ORDERED THAT** the March 15, 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

<sup>&</sup>lt;sup>7</sup> Supra notes 3 and 4.