

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.

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, 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.⁶

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 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

³ *Id.* at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

⁶ 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.⁷ 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.

ORDER

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

⁷ *Supra* notes 3 and 4.