

² The Board notes that, following the December 15, 2021 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP) for the period October 26 to December 9, 2021.

FACTUAL HISTORY

On November 29, 2021 appellant, then a 52-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2021 he injured his left shoulder when he lifted a box from the bottom shelf of a rack into the van, while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that appellant was injured in the performance of duty.

In support of his claim, appellant submitted a report dated December 1, 2021 from Dr. Charles R. Kaelin, a Board-certified orthopedic surgeon. Dr. Kaelin related that appellant was injured at work on October 25, 2021 when he lifted a large metal container. He diagnosed strain of the long head left bicep muscle and indicated that a magnetic resonance imaging scan report indicated a partial ulnar collateral ligament tear and more acute tears of the radial collateral ligament and common extensor tendon. Dr. Kaelin placed appellant on modified duty.

By decision dated December 15, 2021, OWCP accepted appellant's claim for left bicep muscle, fascia, and tendon strain/sprain.

By separate decision also dated December 15, 2021, OWCP denied appellant's claim for COP for the period October 26 to December 9, 2021, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted October 25, 2021 employment injury. It noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of the accepted employment 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

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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

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 his burden of proof to establish entitlement to COP for the period October 26 to December 9, 2021.

Appellant filed written notice of his traumatic injury (Form CA-1) on November 29, 2021. By decision dated December 15, 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted October 25, 2021 employment injury. It noted that the denial of COP did not preclude appellant's from filing a claim for disability due to the effects of the accepted employment injury.

Because appellant filed written notice of his traumatic injury claim (Form CA-1) on November 29, 2021 the Board finds that it was not filed within 30 days of the accepted October 25, 2021 employment injury, as specified in 5 U.S.C. §§ 8118(a) and 8122(a)(2). Accordingly, appellant is not entitled to COP.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period October 26 to December 9, 2021.

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).

ORDER

IT IS HEREBY ORDERED THAT the December 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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