

<sup>2</sup> The Board notes that, following the issuance of the February 1, 2022 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 her burden of proof to establish entitlement to continuation of pay (COP).

## **FACTUAL HISTORY**

On November 30, 2021 appellant, then a 47-year-old health aid technician, filed a traumatic injury claim (Form CA-1) alleging that on October 17, 2021 she was exposed to COVID-19 when she completed a one-to-one close observation with a patient, while in the performance of duty. She indicated that she had tested positive for COVID-19. Appellant stopped work on October 17, 2021 and returned to work on November 29, 2021.

By decision dated December 10, 2021, OWCP denied appellant's claim for COP, finding that she had not reported the October 17, 2021 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other benefits. OWCP notified appellant that she could claim compensation for wage loss by filing a claim for compensation (Form CA-7).

On December 24, 2021 appellant requested reconsideration. She argued that she did not file the required form within 30 days of the date of injury, as she was very ill and was unaware of the requirement.

By decision dated January 25, 2022, OWCP accepted appellant's claim for COVID-19. The record reflects that she received wage-loss compensation on the supplemental rolls from October 25 to November 29, 2021.

By decision dated February 1, 2022, OWCP denied modification of the December 10, 2021 decision.

## **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>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

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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).

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>

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>7</sup>

### **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 her traumatic injury on a Form CA-1 on November 30, 2021, alleging that on October 17, 2021 she was exposed to COVID-19. She stopped work on October 17, 2021. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was October 17, 2021.<sup>8</sup> As appellant filed her Form CA-1 on November 30, 2021 more than 30 days after the October 17, 2021 date of injury, the Board finds that she has not met her burden of proof.

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 her burden of proof to establish entitlement to COP.

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<sup>6</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>7</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.

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 1, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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