

**M.P., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
Edison, NJ, Employer**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

### Case Submitted on the Record

Before:

## ***JURISDICTION***

## ***ISSUE***

## ***FACTUAL HISTORY***

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

2021 and returned to work on January 18, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result dated December 28, 2021, which revealed that she tested positive for COVID-19.

Appellant submitted another PCR test result dated January 5, 2022, revealing that she remained positive for COVID-19.

By decision dated March 21, 2022, OWCP denied appellant's claim for COP, finding that she did not report the injury on a form approved by OWCP within 30 days following the alleged 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.<sup>2</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</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>5</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>6</sup>

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>5</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>6</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 her burden of proof to establish entitlement to COP.

The record reflects that appellant filed written notice of her traumatic injury (Form CA-1) on March 7, 2022, alleging that on December 23, 2021 she was exposed to COVID-19. She stopped work on December 23, 2021. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 23, 2021.<sup>7</sup> As appellant filed her Form CA-1 on March 7, 2022 more than 30 days after the December 23, 2021 date of injury, the Board finds that appellant has not met his 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.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 17, 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

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<sup>7</sup> *Id.*