United States Department of Labor Employees' Compensation Appeals Board

MAT A II A)
M.N., Appellant)
)
and) Docket No. 22-0728
) Issued: February 14, 2023
U.S. POSTAL SERVICE, WEST WARICK)
POST OFFICE, West Warwick, RI, Employer)
)
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

ORDER REMANDIND CASE

Before:

ALEC J. KOROMILAS, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On April 7, 2022 appellant filed a timely appeal from a February 22, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).

On January 31, 2022 appellant, then a 47-year-old customer service operations specialist supervisor, filed a traumatic injury claim (Form CA-1) alleging that on December 28, 2021 she contracted COVID-19 after being exposed by another supervisor while in the performance of duty. She explained that she received a positive COVID-19 test result on January 4, 2022 and was seen by Dr. Joyce Alves, an osteopath specializing in family medicine, who prescribed an inhaler, acetaminophen, and paroxetine. On the reverse side of the claim form, appellant's supervisor, J.N., acknowledged that appellant was injured in the performance of duty, but controverted continuation of pay (COP) because the claim was not reported on a Form CA-1 within 30 days of the injury. Appellant stopped work on January 3, 2022 and returned to work on January 31, 2022.

Appellant submitted a rapid antigen test result, collected on January 4, 2022, which revealed that she tested positive for COVID-19.

Appellant also submitted photographs of prescriptions for paroxetine and a fluticasone propionate and salmeterol inhaler filled on January 27, 2022.

By decision dated February 22, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted employment injury. It noted that the denial of COP did not affect her entitlement to other compensation benefits.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

Section 8118(a) of the Federal Employees' Compensation Act (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. This latter section provides that written notice of injury shall be given within 30 days. The context of section 8122 makes clear that this means within 30 days of the injury.

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.⁴

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 CFR 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."

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will, therefore, be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's

¹ 5 U.S.C. § 8118(a).

² *Id.* at § 8122(a)(2).

³ 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).

⁴ 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).

⁵ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 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.

claim for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 22, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 14, 2023 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

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

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

⁶ See Order Remanding Case, B.B., Docket No. 23-0124 (issued January 25, 2023); Order Remanding Case, J.S., Docket No. 22-0854 (issued December 5, 2022; Order Remanding Case, A.E., Docket No. 22-0633 (issued October 14, 2022).