

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>1</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>3</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>4</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>5</sup>

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

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<sup>1</sup> *Id.* at § 8118(a).

<sup>2</sup> *Id.* at § 8122(a)(2).

<sup>3</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). The Board notes that FECA Bulletin No. 20-05, Federal Employees Contracting COVID-19 in the Performance of Duty (issued March 31, 2020), also provides that if the employer supports the claim and that the exposure occurred, and the CA-1 is filed within 30 days, the employee is eligible to receive COP for up to 45 days.

<sup>4</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>5</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>6</sup> *See Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022); *Order Remanding Case, T.S.*, Docket No. 22-0830 (issued December 19, 2022); *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022).

**IT IS HEREBY ORDERED THAT** the April 4, 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 23, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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