

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 11, 2022 appellant, then a 35-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she contracted COVID-19 on January 26, 2022 while in the performance of duty. She noted that she had been in frequent, close contact with patients and coworkers who had tested positive for COVID-19. Appellant developed a sore throat on January 24, 2022, experienced worsening cough, body aches, fever, fatigue, and congestion on January 26, 2022, and tested positive for COVID-19 on January 27, 2022. The employing establishment instructed her to quarantine. Appellant stopped work on January 26, 2022 and returned to work on February 4, 2022. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) laboratory test result, collected on January 27, 2022, which revealed that she tested positive for COVID-19.

By decision dated March 21, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the January 26, 2022 injury on a form approved by OWCP 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 compensation benefits.

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

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.⁵

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

² *Supra* note 1 at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *K.E.*, Docket No. 22-0482 (issued June 16, 2022); *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).

⁵ 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).

(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.”⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement to COP.

Appellant filed her Form CA-1 on March 11, 2022. By decision dated March 21, 2022, OWCP denied her request for COP, finding that her claim was not filed within 30 days of the alleged January 26, 2022 employment injury. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was January 26, 2022.⁷

Because appellant filed her Form CA-1 on March 11, 2022, the Board finds that appellant did not file her claim within 30 days of the claimed January 26, 2022 employment injury, as specified in section 8118(a) and 8122(a)(2) of FECA.⁸ Accordingly, she is not entitled to COP.

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.

⁶ 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.

⁷ *Id.*

⁸ *Id.*

ORDER

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

Issued: February 22, 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