

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 10, 2022 appellant, then a 43-year-old materials handler, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2021 he tested positive for COVID-19 and experienced multiple symptoms after handling the laundry of an infected inmate and delivering commissary items to units housing infected inmates while in the performance of duty. He stopped work on August 24, 2021 and returned to light-duty work on November 30, 2021.

In support of his claim, appellant submitted a rapid antigen test dated August 24, 2021, which indicated that he was positive for COVID-19.

By decision dated February 14, 2022, OWCP denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted August 24, 2021 employment injury.

On March 18, 2022 appellant requested reconsideration of the February 14, 2022 decision. He asserted that his claim was not filed within 30 days due to the severity of his symptoms, resulting hospital admission, continued need for oxygen, and resulting brain fog, loss of concentration, and blurry vision.

By decision dated March 29, 2022, OWCP accepted appellant's claim for COVID-19. In a separate decision of even date, it denied modification of the February 14, 2022 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.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

² *Id.* at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *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).

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).

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.”⁶

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 his traumatic injury on a Form CA-1 on February 10, 2022, alleging that on August 24, 2021 he was exposed to COVID-19. Appellant stopped work on August 24, 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 15, 2021.⁷ As appellant filed his Form CA-1 on February 10, 2022, more than 30 days after the August 24, 2021 date of injury, the Board finds that he 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 his 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.*

ORDER

IT IS HEREBY ORDERED THAT the March 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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