

**United States Department of Labor
Employees' Compensation Appeals Board**

W.L., Appellant

and

**U.S. POSTAL SERVICE, MID ISLAND
PROCESSING AND DISTRIBUTION
CENTER, Melville, NY, Employer**

**Docket No. 22-0871
Issued: January 12, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 18, 2022 appellant filed a timely appeal from January 5, 2022 merit decision and a May 9, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

FACTUAL HISTORY

On December 6, 2021 appellant, then a 58-year-old supervisor of distribution operations, filed a traumatic injury claim (Form CA-1) alleging that on August 14, 2021 she started to feel the onset of COVID-19 symptoms following interactions with coworkers. She stopped work that day. Appellant further noted that on September 15, 2021 she was hospitalized with chest pains due to

¹ 5 U.S.C. § 8101 *et seq.*

pericarditis secondary to the COVID-19 virus. She returned to work on October 21, 2021. Appellant submitted medical evidence with her claim.

OWCP received a September 10, 2021 COVID-19 antigen test result which indicated that appellant had tested positive for COVID-19.

By decision dated January 5, 2022, OWCP denied appellant's claim for continuation of pay (COP), finding that she did not report the injury on a form approved by OWCP within 30 days following the injury. It noted that the denial of COP did not preclude her from claiming wage loss due to the alleged August 14, 2021 employment incident.

On January 31, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 14, 2022 letter, OWCP's hearing representative notified appellant of a telephonic hearing scheduled for April 28, 2022 at 1:30 p.m. Eastern Standard Time. The notice included a toll-free number to call and provided the appropriate passcode. The hearing representative mailed the notice to appellant's last known address of record as provided on December 6, 2021. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated April 6, 2022, OWCP accepted appellant's traumatic injury claim for COVID-19.

By decision dated May 9, 2022, OWCP determined that appellant had abandoned her request for an oral hearing. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain her failure to appear.

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 a Form CA-1

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).

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 (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 her burden of proof to establish entitlement to COP.

The record reflects that appellant filed written notice of her traumatic injury on a Form CA-1 on December 6, 2021, alleging that on August 14, 2021 she started to feel the onset of COVID-19 symptoms following interactions with coworkers. She stopped work that day. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was August 14, 2021.⁷ As appellant filed her Form CA-1 on December 6, 2021 more than 30 days after the August 14, 2021 date of injury, the Board finds that she has not met her 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.

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).

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 January 5, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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