



## **FACTUAL HISTORY**

On January 12, 2022 appellant, then a 40-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2021 she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, acknowledged that she stopped work on December 8, 2021, and controverted COP, noting that the claim had been filed more than 30 days following the date of injury.

In support of her claim, appellant submitted a positive COVID-19 antigen test, dated December 9, 2021.

By decision dated January 26, 2022, OWCP denied COP, finding that more than 30 days had elapsed between her date of injury and the date her traumatic injury claim was filed.

Appellant requested reconsideration on March 7, 2022. She alleged that the employing establishment had not provided a Form CA-1 when she completed the Occupational Safety and Health Administration's (OSHA's) Form 301 for her COVID-19 condition. Appellant explained that she completed her CA-1 form after she was told by co-workers to complete the form, which created a discrepancy between the completion dates of the forms.

On March 31, 2022 OWCP accepted appellant's claim for COVID-19. In a separate decision, also dated March 31, 2022, it denied modification of its January 26, 2022 decision. OWCP noted that appellant's date of last exposure was December 8, 2021, which was considered her date of injury. However, it further noted that the date of notification of the injury on a form approved by OWCP was January 12, 2022, and thus was not within 30 days of the date of injury.

Appellant again requested reconsideration on May 3, 2022. She argued that she was entitled to COP, as she had previously submitted an employer-specific form to her supervisors.

By decision dated July 14, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim.

## **LEGAL PRECEDENT -- ISSUE 1**

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

---

<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

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>5</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>6</sup>

### **ANALYSIS -- ISSUE 1**

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

Appellant filed her Form CA-1 on January 12, 2022. By decision dated January 26, 2022, OWCP denied COP, finding that more than 30 days had elapsed between her date of injury and the date her traumatic injury claim was filed. It denied modification of this decision on March 31, 2022. OWCP considered the date of last exposure, December 8, 2021, as her date of injury.

The 30<sup>th</sup> day following December 8, 2021 was January 7, 2022. Because appellant filed her Form CA-1 on January 12, 2022, the Board finds that it was not filed within 30 days of the accepted December 8, 2022 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.<sup>7</sup> As such, appellant has not met her burden of proof to establish entitlement to COP.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>8</sup>

---

<sup>5</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>6</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>7</sup> *Supra* notes 2 and 3.

<sup>8</sup> 5 U.S.C. § 8128(a); *see T.K.*, Docket No. 19-1700 (issued April 30, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *W.C.*, 59 ECAB 372 (2008).

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>9</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>10</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>11</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>12</sup>

### ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

In support of her May 3, 2022 request for reconsideration, appellant contended that she was entitled to COP, as she had previously submitted an employer-specific form to her supervisors. This argument was previously addressed by OWCP in its March 31, 2022 decision, and appellant did not advance a new and relevant legal argument.<sup>13</sup> The Board has held that the submission of evidence or argument that repeats or duplicates evidence or argument already of record does not constitute a basis for reopening a case. Appellant, therefore, has not demonstrated that OWCP erroneously applied or interpreted a specific point of law. Moreover, she has not advanced a relevant legal argument not previously considered. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

Appellant also did not submit evidence in support of her reconsideration request. As she did not submit any relevant and pertinent new evidence not previously considered by OWCP,

---

<sup>9</sup> 20 C.F.R. § 10.606(b)(3); *see L.D., id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>10</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>11</sup> *Id.* at § 10.608(a); *F.V.*, Docket No. 18-0230 (issued May 8, 2020); *see also M.S.*, 59 ECAB 231 (2007).

<sup>12</sup> *Id.* at § 10.608(b); *B.S.*, Docket No. 20-0927 (issued January 29, 2021); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>13</sup> *S.E.*, Docket No. 17-0222 (issued December 21, 2018); *T.H.* Docket Nos. 17-1578 & 17-1651 (issued April 26, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

appellant is not entitled to a review of the merits of her claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>14</sup>

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>15</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP. The Board further finds that OWCP properly denied her request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 31 and July 14, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 17, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

---

<sup>14</sup> 20 C.F.R. § 10.606(b)(3)(iii).

<sup>15</sup> *See D.G.*, Docket No. 19-1348 (issued December 2, 2019); *S.H.*, Docket No. 19-1115 (issued November 12, 2019); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).