

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

_____)
L.H., Appellant)
)
and) **Docket No. 22-1187**
) **Issued: January 4, 2023**
DEPARTMENT OF VETERANS AFFAIRS,)
LOUIS STOKES CLEVELAND VA MEDICAL)
CENTER, Cleveland, OH, Employer)
_____)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 10, 2022 appellant filed a timely appeal from a July 11, 2022 merit 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² Following the issuance of the July 11, 2022 decision, OWCP received additional evidence and appellant submitted additional argument on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On July 7, 2022 appellant, then a 65-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2022 she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, A.V., an employing establishment supervisor, controverted the claim, contending that it was filed more than 30 days after the date of injury and she failed to submit supporting medical evidence. Appellant stopped work on May 12, 2022 and returned on July 5, 2022.

By decision dated July 11, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the May 12, 2022 injury on an OWCP-approved form within 30 days of the date of the 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.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

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.⁶ 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

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

⁶ 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).

Injury since the precise time of transmission may not always be known due to the nature of the virus.”⁷

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 July 7, 2022. She stopped work on May 12, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was May 12, 2022.⁸

Because appellant filed her Form CA-1 on July 7, 2022 the Board finds that it was not filed within 30 days of the alleged May 12, 2022 employment injury, the Board finds that she has not met her burden of proof.⁹

On appeal appellant contends that she was unable to timely file her request for COP because she suffered from COVID-19 pneumonia and stroke for which she required hospitalization. As previously noted, the Board is precluded from reviewing evidence which was not of record as of the date of OWCP’s final decision.¹⁰

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.

⁷ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 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.

⁸ *Id.*

⁹ *See H.J.*, Docket No. 22-0772 (issued August 25, 2022); *J.T.*, Docket No. 22-0588 (issued July 20, 2022).

¹⁰ *See supra* note 2.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 4, 2023
Washington, DC

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

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

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