

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

R.C., Appellant)	
)	
and)	Docket No. 23-0300
)	Issued: July 13, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST HAVEN VA MEDICAL CENTER,)	
West Haven, CT, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On December 8, 2022 appellant filed a timely appeal from a July 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0300.

On July 17, 2022 appellant, then a 34-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 16, 2022 he was exposed to COVID-19 during interactions with his patients and coworkers while in the performance of duty. He noted that he developed symptoms on June 17, 2022 and tested positive for COVID-19 on June 18, 2022. On the reverse side of the claim form, appellant's supervisor did not indicate the date he stopped work, but acknowledged that he was injured in the performance of duty.

In support of his claim, appellant submitted an antigen test result dated June 18, 2022, which revealed that he tested positive for COVID-19.

On July 25, 2022 OWCP received a work status report (Form CA-3) indicating that appellant stopped work on June 17, 2022.

By decision dated July 25, 2022, OWCP denied appellant's claim for continuation of pay (COP), finding that he had not reported his June 16, 2022 injury on an OWCP-approved form

within 30 days following the injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other benefits. OWCP notified appellant that she could claim compensation for wage loss resulting from the decision by filing a claim for compensation (Form CA-7).

The Board, having duly considered this matter, finds that this case is not in posture for decision.

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.¹ This latter section provides that written notice of injury shall be given within 30 days.² The context of section 8122 makes clear that this means within 30 days of the injury.³

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.⁴

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."⁵

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim

¹ 5 U.S.C. § 8118(a).

² *Id.* at § 8122(a)(2).

³ *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).

⁴ 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).

⁵ 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.

for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the July 25, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 13, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁶ See *Order Remanding Case, V.M.*, Docket No. 21-1096 (issued May 5, 2023); *Order Remanding Case, L.J.*, Docket No. 22-1041 (issued December 30, 2022); see also *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022).