

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

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| N.A., Appellant                        | ) |                              |
|  | ) |                              |
| and                                    | ) | <b>Docket No. 23-0220</b>    |
|  | ) | <b>Issued: June 14, 2023</b> |
| <b>DEPARTMENT OF VETERANS AFFAIRS,</b> | ) |                              |
| <b>PUGET SOUND HEALTHCARE SYSTEM,</b>  | ) |                              |
| <b>SEATTLE VA MEDICAL CENTER,</b>      | ) |                              |
| <b>Seattle, WA, Employer</b>           | ) |                              |
|  | ) |                              |

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On December 2, 2022 appellant filed a timely appeal from a June 28, 2022 merit decision and a November 25, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant requested that she be paid back for the sick leave that she used when she contracted COVID-19. She explained that she had never called in sick until she contracted this disease. The Board, in exercising its discretion, denies the request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, oral argument is denied and this decision is based on the case record as submitted to the Board.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP); and (2) whether OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

## **FACTUAL HISTORY**

On June 21, 2022 appellant, then a 52-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 24, 2022 she tested positive for COVID-19 while in the performance of duty. She stopped work on April 24, 2022 and returned on May 22, 2022. On the reverse side of the claim form, the supervisor acknowledged that appellant was injured in the performance of duty.

On June 26, 2022 the employing establishment controverted the claim, contending that appellant's injury was not reported on an OWCP-approved form within 30 days of the date of the injury.

By decision dated June 28, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the April 24, 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.

On July 7, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 20, 2022 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for November 8, 2021 at 1:30 p.m. Eastern Standard Time (EST). The hearing representative provided a toll-free number and passcode for access to the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant failed to appear for the hearing.

By decision dated November 25, 2022, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance but, failed to appear. It further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

## **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>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</sup>

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>6</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>7</sup>

### ANALYSIS -- ISSUE 1

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

Appellant filed written notice of her traumatic injury on a Form CA-1 on June 21, 2022 alleging that she contracted COVID-19 while in the performance of duty. She stopped work on April 24, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was April 24, 2022.<sup>8</sup> The 30<sup>th</sup> day following April 24, 2022 was May 24, 2022. As appellant filed her Form CA-1 on June 21, 2022, more than 30 days after the April 24, 2022 date of injury, the Board finds that appellant has not met her burden of proof.<sup>9</sup>

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<sup>3</sup> *Id.* at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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).

<sup>6</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>7</sup> 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. 1172. 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>8</sup> *Id.*

<sup>9</sup> *See K.P.*, Docket No. 22-1184 (issued December 28, 2022); *H.J.*, Docket No. 22-0772 (issued August 25, 2022); *J.T.*, Docket No. 22-0588 (issued July 20, 2022).

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.

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

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>10</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>11</sup> OWCP has the burden of proving that it properly mailed the notice to the claimant and any representative of record.<sup>12</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>13</sup> The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.<sup>14</sup> Where it has been determined that a claimant has abandoned his or her right to a hearing OWCP will issue a formal decision finding that the claimant abandoned the request for a hearing.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following OWCP's June 28, 2022 decision denying appellant's request for COP, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a September 20, 2022 notice, OWCP's hearing representative notified her that OWCP had scheduled a telephonic hearing for November 8, 2021 at 1:30 p.m. EST. OWCP's hearing representative mailed the notice to appellant's last known address of record. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary

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<sup>10</sup> *Id.* at § 10.616(a).

<sup>11</sup> *Id.* at § 10.617(b).

<sup>12</sup> *M.S.*, Docket No. 22-0362 (issued July 29, 2022); *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021); *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>13</sup> 20 C.F.R. § 10.622(f).

<sup>14</sup> *Id.*

<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6g (September 2020); *see also L.L. and V.C. supra* note 12; *K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

course of business is presumed to have been received. This is called the mailbox rule.<sup>16</sup> Appellant failed to call in for the scheduled hearing at the prescribed time. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing explaining her failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.<sup>17</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 determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 28 and November 25, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 14, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>16</sup> See *M.S., L.L., V.C., and L.T.*, *supra* note 12.

<sup>17</sup> *Id.*