

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 23-0285</b>
	)	<b>Issued: June 6, 2023</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Philadelphia, PA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On December 21, 2022 appellant filed a timely appeal from a June 28, 2022 merit decision and a November 22, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

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

**FACTUAL HISTORY**

On May 17, 2022 appellant, then a 43-year-old collect and delivery employee, filed a traumatic injury claim (Form CA-1) alleging that on November 12, 2021 he injured his lower back

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

delivering a package while in the performance of duty. He indicated by checkmark that he was claiming COP. On the reverse side of the claim form, the employing establishment indicated that it had received notice of the injury on May 17, 2022. Appellant stopped work on November 12, 2021.

In a development letter dated May 24, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the medical evidence necessary to establish his claim. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received medical evidence.

On June 28, 2022 OWCP accepted appellant's claim for a sprain of the ligaments of the thoracic spine.

By decision dated June 28, 2022, OWCP denied appellant's claim for COP, finding that he had failed to report the November 12, 2021 employment injury on a form approved by OWCP within 30 days, as required. It advised him that the denial of COP did not affect his entitlement to compensation and that he could, therefore, file a claim for compensation (Form CA-7) for lost wages due to his accepted employment injury.

In a statement dated July 22, 2022, W.L., a supervisor, asserted that at the time of the November 2021 incident, another supervisor was in charge who failed to turn in the proper paperwork.

On July 23, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an October 7, 2022 notice, OWCP's hearing representative informed appellant that a telephonic hearing was scheduled for November 10, 2022 at 11:00 a.m., Eastern Standard Time (EST). The notice provided a toll-free number and the required passcode to participate in the telephone hearing. OWCP's hearing representative instructed appellant to call the toll-free number provided and enter the passcode when prompted. She mailed the letter to his last known address of record.

Appellant did not call for the scheduled hearing and there is no indication that he requested postponement.

By decision dated November 22, 2022, OWCP found that appellant had abandoned his request for an oral hearing. It determined that he had failed to appear at the telephonic hearing scheduled for November 10, 2022 and had failed to contact OWCP either before or after the scheduled hearing to request a postponement or explain his failure to appear.

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

Section 8118(a) of FECA<sup>2</sup> authorizes continuation of pay, 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

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<sup>2</sup> 5 U.S.C. § 8118(a).

immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. 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>

OWCP regulations provide, in pertinent part, that to be eligible for continuation of pay, 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 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.<sup>5</sup>

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.<sup>6</sup> OWCP's procedures provide that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contains words of claim, can be used to satisfy timely filing requirements.<sup>7</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>8</sup> which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay. Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.<sup>9</sup>

### ANALYSIS -- ISSUE 1

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

Appellant filed written notice of his traumatic injury on May 17, 2022, more than 30 days after his November 12, 2021 employment injury. As he filed his claim on May 17, 2022, the Board finds that it was not filed within 30 days of the accepted November 12, 2021 injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.<sup>10</sup> Accordingly, the Board finds that OWCP properly

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<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</sup> *See T.N.*, Docket No. 21-0402 (issued January 31, 2022); *M.B.*, Docket No. 17-1782 (issued February 5, 2018).

<sup>5</sup> 20 C.F.R. § 10.205(a)(1-3); *see also M.B., id.*

<sup>6</sup> *Id.* at § 10.210(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.8075b (June 2012).

<sup>8</sup> 5 U.S.C. § 8122(d)(3).

<sup>9</sup> *See E.M.*, Docket No. 20-0837 (issued January 27, 2021); *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>10</sup> 5 U.S.C. §§ 8118(a), 8122(a)(2).

denied COP as appellant did not file written notice of injury on an approved form within the requisite 30 days from the date of injury.<sup>11</sup>

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**

A claimant who has received a final adverse decision by OWCP may obtain 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>12</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>13</sup> OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>14</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. 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.<sup>15</sup>

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

The Board finds that OWCP properly determined that appellant had abandoned his 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 claim for COP, he filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In an October 7, 2022 letter, OWCP's hearing representative notified him that a telephonic hearing was scheduled for November 10, 2022 at 11:00 a.m., EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record<sup>16</sup> and provided him with a toll-free number and a pass code to use at the time of the scheduled hearing. There is no evidence of nondelivery of the hearing notice. Appellant, however, failed to appear

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<sup>11</sup> *D.R.*, Docket No. 22-0361 (issued July 8, 2022); *A.G.*, Docket No. 20-0942 (issued February 14, 2022).

<sup>12</sup> 20 C.F.R. § 10.616(a).

<sup>13</sup> *Id.* at § 10.617(b).

<sup>14</sup> *T.R.*, Docket No. 19-1952 (issued April 24, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>15</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>16</sup> *R.J.*, Docket No. 18-1701 (issued May 18, 2020); *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

for the scheduled hearing and he did not request a postponement or provide an explanation to OWCP for his failure to attend the hearing within 10 days of the scheduled hearing.<sup>17</sup> The Board thus finds that OWCP properly determined that appellant abandoned his request for an oral hearing.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish entitlement to COP. The Board further finds that OWCP properly determined that appellant had abandoned his 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 22, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 6, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>17</sup> *R.J., id.; A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>18</sup> *E.M.*, Docket No. 29-0837 (issued January 27, 2021).