

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

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| J.T., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0372 |
| |) | Issued: June 12, 2023 |
| DEPARTMENT OF STATE, BUREAU OF |) | |
| CONSULAR AFFAIRS, Portsmouth, NH, |) | |
| Employer |) | |
| _____ |) | |

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

Case Submitted on the Record

ORDER REMANDING CASE

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

On January 21, 2023 appellant filed a timely appeal from December 29, 2022 and January 4, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0372.

On December 12, 2022 appellant, then a 48-year-old passport and visa examiner, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2022 she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, her supervisor did not indicate the date that appellant stopped work, but acknowledged that she was injured in the performance of duty.

In support of her claim, appellant submitted a note dated November 13, 2022 indicating that she was evaluated by Shannyn Waldron, a physician assistant, for COVID-19 infection and asthma with acute exacerbation. Ms. Waldron further noted that a COVID-19 antigen test administered that day was positive.

By decisions dated December 29, 2022 and January 4, 2023, OWCP denied appellant's claim for continuation of pay (COP), finding that she had not reported her injury on an OWCP-approved form within 30 days of the alleged November 9, 2022 employment injury. It noted that

the decision concerned only her entitlement to COP and did not affect her entitlement to other compensation benefits.

The Board, having duly considered the 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 properly develop the case to determine the date of last exposure. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

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.

⁶ *See Order Remanding Case, F.G.*, Docket No. 22-0859 (issued November 29, 2022); *see also K.C.*, Docket No. 22-1066 (issued December 23, 2022); *Order Remanding Case, T.S.*, Docket No. 22-0830 (issued December 19, 2022); *Order Remanding Case, G.C.*, Docket No. 21-1016 (issued September 27, 2022).

IT IS HEREBY ORDERED THAT the December 29, 2022 and January 4, 2023 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: June 12, 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