

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

_____)	
E.N., Appellant)	
)	
and)	Docket No. 22-0852
)	Issued: March 10, 2023
U.S. POSTAL SERVICE, SUGAR LOAF POST OFFICE, Albany, NY, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 12, 2022 appellant filed a timely appeal from a May 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 27, 2022 appellant, then a 59-year-old postmaster, filed a traumatic injury claim (Form CA-1) alleging that on December 29, 2021 she developed COVID-19. She noted that she

¹ Appellant listed April 27, 2022 as the date of the decision on the appeal form; however, that was the date of an informational letter. The date of the last decision was May 4, 2022.

² 5 U.S.C. § 8101 *et seq.*

was exposed to COVID-19 while in the performance of duty. The Form CA-1 indicated that appellant's regular work hours were 8:00 a.m. to 5:00 p.m. Monday through Friday, and that she stopped work at 8:00 a.m. on December 30, 2021 and returned to work on January 17, 2022.

By decision dated May 4, 2022, OWCP denied appellant's claim for COP, finding that she did not report the injury on a form approved by OWCP within 30 days following the date of injury. It noted that the denial of COP did not preclude her from claiming disability due to the alleged December 29, 2021 employment injury.

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 [d]ate of [i]njury since the precise time of transmission may not always be known due to the nature of the virus."⁷

³ *Id.* at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *See K.E.*, Docket No. 22-0842 (issued June 16, 2022); *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).

⁷ 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.

ANALYSIS

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

The record reflects that appellant filed written notice of her traumatic injury on a Form CA-1 on April 27, 2022, alleging that on December 29, 2021 she contracted COVID-19 while in the performance of duty. The Form CA-1 indicates that her work schedule was 8:00 a.m. to 5:00 p.m. Monday through Friday, and that she stopped work at 8:00 a.m. on December 30, 2021. Since 8:00 a.m. on December 30, 2021 was the beginning of her work shift, the Board finds that appellant's date of last exposure was December 29, 2021.

As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 29, 2021.⁸ As appellant filed her Form CA-1 on April 27, 2022, more than 30 days after the December 29, 2021 date of injury, the Board finds that she has not met her burden of proof.

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.

⁸ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2022 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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