

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

_____)	
A.P., Appellant)	
)	
and)	Docket No. 22-1007
)	Issued: March 23, 2023
DEPARTMENT OF AGRICULTURE, U.S.)	
FOREST SERVICE, Albuquerque, NM,)	
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 June 21, 2022 appellant filed a timely appeal from a June 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the June 2, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

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

FACTUAL HISTORY

On April 25, 2022 appellant, then a 33-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 2022 she sustained a broken collarbone when she fell off her snowmobile while in the performance of duty. On the reverse side of the claim form, her supervisor acknowledged that she was injured in the performance of duty.

OWCP, by development letter dated April 26, 2022, informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In response to OWCP's request, appellant submitted medical evidence and an additional narrative statement describing how her injury occurred. The evidence of record establishes that she underwent open reduction internal fixation of the left clavicle on March 14, 2022.

By decision dated June 2, 2022, OWCP accepted appellant's claim for fracture of unspecified part of left clavicle.

By separate decision of even date, OWCP denied appellant's claim for COP, finding that she had not reported the March 9, 2022 employment injury on a form approved by OWCP within 30 days, as required. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to her accepted 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

³ 5 U.S.C. § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

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

ANALYSIS

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

Appellant filed written notice of her traumatic injury on April 25, 2022 which was more than 30 days after her March 9, 2022 employment injury. Sections 8118(a) and 8122(a)(2) of FECA specify that notice of injury shall be given in writing within 30 days after the injury.⁷ The Board thus finds that OWCP properly denied COP as appellant did not file her claim within the requisite 30 days from the date of injury.⁸

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 eligibility for COP.

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 5 U.S.C. §§ 8118(a), 8122(a)(2).

⁸ 20 C.F.R. § 10.210(a); *T.N.*; Docket No. 21-0402 (issued January 31, 2022); *J.S.*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the June 2, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 23, 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