

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

_____)	
R.S., Appellant)	
)	
and)	Docket No. 22-1147
)	Issued: March 10, 2023
U.S. POSTAL SERVICE, HONOLULU POST OFFICE, Honolulu, HI, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 25, 2022 appellant filed a timely appeal from a July 11, 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.

ISSUE

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

FACTUAL HISTORY

On July 6, 2022 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 10, 2022 he contracted COVID-19 when he was exposed to an infected coworker. On the reverse side of the claim form, appellant's immediate supervisor indicated that appellant stopped work on May 10, 2022 and returned to work on May 24, 2022.

¹ 5 U.S.C. § 8101 *et seq.*

In support of his claim, appellant submitted a nucleic acid amplification test dated May 18, 2022, which revealed that he tested positive for COVID-19. An undated report of work status, signed by an employing establishment official, indicated that appellant stopped work on May 10, 2022 and returned to full duty on May 24, 2022.

By decision dated July 11, 2022, OWCP denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of his alleged May 10, 2022 employment injury. It further noted that the decision affected only his entitlement to COP and did not affect his entitlement to other compensation benefits.

LEGAL PRECEDENT

Section 8118 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 traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

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.⁵

FECA Bulletin No. 21-09 at subsection II.2, 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."⁶

² *Supra* note 1 at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁵ 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).

⁶ 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 his burden of proof to establish eligibility for COP.

Appellant filed written notice of his claimed injury on a Form CA-1 on July 6, 2022. By decision dated July 11, 2022, OWCP denied his claim for COP, as his claim was not filed within 30 days of the alleged May 10, 2022 employment incident. It noted that the denial of COP did not preclude appellant's entitlement to other compensation benefits. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was May 10, 2022.⁷ As, appellant did not submit written notice of injury on an approved form until July 6, 2022, more than 30 days after the May 10, 2022 date of injury, the Board finds that he is not entitled to COP.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 his burden of proof to establish eligibility for COP.

⁷ *Id.*

⁸ *See A.G.*, Docket No. 20-0942 (issued February 14, 2022).

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 10, 2023
Washington, DC

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

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

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