

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

C.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Edison, NJ, Employer)

**Docket No. 22-1322
Issued: March 31, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 5, 2022 appellant filed a timely appeal from an August 8, 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 entitlement to continuation of pay (COP).

FACTUAL HISTORY

On July 29, 2022 appellant, then a 64-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2022 he contracted COVID-19 after interacting with coworkers while preparing for the day's delivery while in the performance of duty. He related that

¹ 5 U.S.C. § 8101 *et seq.*

he tested positive for COVID-19 on June 29, 2022 through an at-home rapid test and again tested positive on June 30, 2022 through a polymerase chain reaction (PCR) test. Appellant indicated that he began experiencing symptoms on June 27, 2022 with low-grade fever, chills, nausea, and cough, and he sought care the following day at his primary care provider, who cleared him to return to work on July 25, 2022. He stopped work on June 27, 2022 and returned to work on July 26, 2022.

In support of his claim, appellant submitted a June 28, 2022 note from Rhea Cooper, a nurse practitioner, holding him off work from June 28 to July 1, 2022 due to illness.

A PCR test result, collected on June 30, 2022, related that appellant tested positive for COVID-19.

In a July 21, 2022 note, Ms. Cooper held appellant off work until July 25, 2022.

By decision dated August 8, 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 June 27, 2022 employment injury. It advised appellant that the COP denial did not affect his entitlement to other compensation benefits.

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.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, 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

² *Id.* 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 762-64 (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. 09-563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

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

ANALYSIS

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

The record reflects that appellant filed written notice of his traumatic injury on a Form CA-1 on July 29, 2022, alleging that on June 27, 2022 he contracted COVID-19 while in the performance of duty. Appellant stopped work on June 27, 2022 and returned to work on July 26, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was June 27, 2022.⁷ As appellant filed his Form CA-1 on July 29, 2022, more than 30 days after the June 27, 2022 date of injury, the Board finds that he has not met his 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 his burden of proof to establish entitlement to COP.

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.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the August 8, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2023
Washington, DC

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

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

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