

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

R.D., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS, VA)
MEDICAL CENTER, Northport, NY, Employer)
_____)

**Docket No. 23-0046
Issued: March 28, 2023**

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 October 1, 2022 appellant filed a timely appeal from a September 26, 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 her burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On September 17, 2022 appellant, then a 50-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 10, 2022 she was exposed to COVID-19 while completing nursing duties in the performance of duty. On the reverse side of the claim form, appellant's

¹ 5 U.S.C. § 8101 *et seq.*

supervisor acknowledged that appellant was injured in the performance of duty. She stopped work on July 10, 2022 and returned on July 22, 2022.

By decision dated September 26, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged July 10, 2022 employment injury. Appellant was advised that this decision only concerned her entitlement to COP and did not affect her 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 is 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 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."⁶

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. 09-1563 (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 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 September 17, 2022 alleging that on July 10, 2022 she was exposed to COVID-19 while in the performance of duty. She stopped work on July 10, 2022 and returned on July 22, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was July 10, 2022.⁷ As appellant filed her Form CA-1 on September 17, 2022, more than 30 days after the July 10, 2022 date of injury, the Board finds that she has not met her burden of proof.

On appeal, appellant argues that she timely filed a claim for COP using an Occupational Safety Health Administration (OSHA) form. The Board has held, however, that an OSHA form is not considered a claim for a period of wage loss as required by 5 U.S.C. § 8118.⁸

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 entitlement to COP.

⁷ *Id.*

⁸ *R.J.*, Docket No. 08-2338 (issued June 9, 2009).

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 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