

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

K.G., Appellant	)	
	)	
and	)	Docket No. 23-0027
	)	Issued: November 29, 2023
DEPARTMENT OF VETERANS AFFAIRS,	)	
OMAHA VA MEDICAL CENTER, Omaha, NE,	)	
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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On October 12, 2022 appellant filed a timely appeal from a September 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 27, 2022 decision, appellant submitted additional evidence to OWCP. 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 entitlement to continuation of pay (COP).

## FACTUAL HISTORY

On August 22, 2022 appellant, then a 47-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on July 22, 2022 she contracted COVID-19 while in the performance duty. On the reverse side of the claim form, her supervisor challenged her claim based on lack of medical evidence and controverted COP. Appellant stopped work on the claimed date of injury and returned to work on August 1, 2022.<sup>3</sup>

In support of her claim, appellant submitted timesheets for the period July 17 through August 27, 2022.

In a medical report dated July 22, 2022, Dr. Allison A. Bird, an osteopath, indicated that appellant would be incapacitated and require treatment from July 22 through August 8, 2022, due to severe COVID-19 symptoms following exposure to co-workers with COVID-19.

In a letter dated August 22, 2022, the employing establishment controverted the COP claim. It related that appellant had not filed the Form CA-1 within 30 days of the alleged date of injury.

By decision dated September 27, 2022, OWCP accepted appellant's traumatic injury claim for COVID-19. By separate decision of even date, it denied her claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged July 22, 2022 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 FECA.<sup>4</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>5</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>6</sup>

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<sup>3</sup> Appellant subsequently filed a September 29, 2022 Form CA-1 for severe COVID-19 complications. OWCP assigned OWCP File No. xxxxxx818. Appellant's claims have been administratively combined by OWCP with the current claim, OWCP File No. xxxxxx688, serving as the master file.

<sup>4</sup> *Supra* note 1 at § 8118(a).

<sup>5</sup> *Id.* at § 8122(a)(2).

<sup>6</sup> *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).

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.<sup>7</sup>

### **ANALYSIS**

The Board finds that appellant has met her burden of proof to establish entitlement to COP.

Appellant filed a Form CA-1 on August 22, 2022 alleging an injury due to exposure to COVID-19 on July 22, 2022. With regard to entitlement to COP, the Board has held that if the date the 30-day period in which to file notice of injury would have expired was a Saturday or Sunday, the time for filing a notice of injury does not expire until the next business day.<sup>8</sup> In the present case, the 30<sup>th</sup> day following July 22, 2022 was Sunday, August 21, 2022. As appellant filed her claim on Monday, August 22, 2022, her CA-1 claim was timely filed.

The September 27, 2022 decision of the Office of Workers' Compensation Programs is reversed.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish entitlement to COP.

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<sup>7</sup> 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).

<sup>8</sup> *Gwen Cohen-Wise*, Docket No. 03-1021 (issued July 23, 2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 27, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 29, 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