

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

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C.E., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
DALLAS VA MEDICAL CENTER, Dallas, TX, )  
Employer )

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**Docket No. 23-0493**  
**Issued: November 15, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 21, 2023 appellant filed a timely appeal from a January 30, 2023 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>

**ISSUE**

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

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

<sup>2</sup> The Board notes that, following the January 30, 2023 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.*

## **FACTUAL HISTORY**

On January 20, 2023 appellant, then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2022 she contracted COVID-19 while in the performance duty. She noted that while admitting a new patient on December 12, 2022, she learned that she had tested positive for COVID-19. On the reverse side of the claim form, the employing establishment controverted appellant's request for COP because notice of the injury had not been reported within 30 days, noting that the injury claim was not received until January 20, 2023. Appellant stopped work on December 12, 2022 and returned to work on December 26, 2022.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result dated December 12, 2022, which indicated a positive result for COVID-19.

A medical form report dated December 13, 2022, bearing an illegible signature, indicated that appellant should isolate and remain off from work for seven days from symptom onset and provided instructions for retesting.

A medical form report dated December 19, 2022, also bearing an illegible signature, indicated that appellant was evaluated for illness and should isolate and remain off from work until December 23, 2022.

By decision dated January 30, 2023, OWCP denied appellant's claim for COP, finding that she had failed to report the December 12, 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 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.<sup>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</sup>

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

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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).

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>6</sup>

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 Date of Injury since the precise time of transmission may not always be known due to the nature of the virus.”<sup>7</sup>

### 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 January 20, 2023, alleging that on December 12, 2022 she was exposed to COVID-19 while in the performance of duty. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 12, 2022.<sup>8</sup> As appellant did not file her Form CA-1 until January 20, 2023, more than 30 days after the December 12, 2022 date of injury, the Board finds that appellant has not met her 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 her burden of proof to establish entitlement to COP.

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<sup>6</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>7</sup> 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.

<sup>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 30, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy 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