

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

_____)
D.M., Appellant)

and)

**DEPARTMENT OF JUSTICE, DEPARTMENT)
OF JUSTICE, FEDERAL BUREAU OF)
PRISONS, FEDERAL CORRECTIONAL)
INSTITUTION JESUP, Jesup, GA, Employer**)
-----)

**Docket No. 23-0609
Issued: October 10, 2023**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On March 21, 2023 appellant filed a timely appeal from December 12, 2022 and March 7, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0609.

On November 30, 2022 appellant, then a 48-year-old medical officer, filed a traumatic injury claim (Form CA-1) alleging that on October 25, 2022 he contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, R.B., stated that appellant was entitled to continuation of pay (COP), noting that although appellant "start[ed] the [filing] process within 30 days," appellant had been trying to complete the Form CA-1 for the past 40 days, but the Employees' Compensation Operations and Management Portal (ECOMP) would not process the form because he had previously worked at another institution. The form did not indicate when appellant stopped work.

Appellant submitted a laboratory test, dated October 25, 2022, which revealed that he tested positive for COVID-19.

By decision dated December 12, 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 the October 25,

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.

On January 5, 2023 appellant requested reconsideration. In a statement of even date, he explained that he submitted the required forms *via* ECOMP on October 27, 2022 while out sick at home. On October 31, 2022 appellant received an e-mail from his previous duty station in Atlanta indicating that the form was incorrectly sent to that institution. He resubmitted the form, and ECOMP still automatically populated the form with information for the Atlanta duty station. Appellant notified ECOMP, as well as personnel of his previous and current duty stations, Atlanta and Jesup, respectively. He returned to work on November 7, 2022 and subsequently e-mailed employing establishment officials at his current duty station as he had not heard back from ECOMP. Appellant maintained that he was told to resubmit the form a third time on November 30, 2022 and then received confirmation that it was accepted. He submitted multiple e-mail exchanges with officials from the Atlanta and Jesup institutions corroborating this timeline, including an October 31, 2022 e-mail from A.A., a safety administrator for the Atlanta institution, to appellant, and R.B., his supervisor, providing details of a Form CA-1 filed on October 27, 2022.

In a letter dated January 25, 2023, OWCP requested that the employing establishment provide additional information regarding whether appellant had withdrawn his initial ECOMP submissions of the Form CA-1.

A January 5, 2023 memorandum from S.S., an employing establishment safety administrator, explained that appellant filed his Form CA-1 twice before the system took the third one. He stated that the local institution could not see or process the first two Form CA-1 claims within the correct time frames. S.S. requested that appellant's case be accepted because the failure to comply with the time frame was not his fault.

A.A., a safety administrator for the Atlanta institution, responded to OWCP's letter on February 13, 2023 indicating that appellant withdrew both initial ECOMP submissions because of a clerical error. He explained that appellant transferred from Atlanta to Jesup in 2021. In a memorandum of even date, A.A. noted that the earlier submissions went to the Atlanta institution, where appellant no longer worked.

By decision dated March 7, 2023, OWCP denied modification of its December 12, 2022 decision.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

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.¹ This latter section provides that written notice of injury shall be given within 30 days.² The context of section 8122 makes clear that this means within 30 days of the injury.³

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 (but if that form is unavailable, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁴

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."⁵

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

¹ 5 U.S.C. § 8118.

² *Id.* at § 8122(a)(2).

³ *E.M.*, Docket No. 20-0837 (issued January 27 2021); *Robert M. Kimzey*, 40 ECAB 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁴ 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).

⁵ 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.

ORDER

IT IS HEREBY ORDERED THAT the March 7, 2023 and December 12, 2022 merit decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 10, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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