

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

A.R., Appellant)	
)	
and)	Docket No. 23-0623
)	Issued: October 23, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST LOS ANGELES VA MEDICAL)	
CENTER, Los Angeles, CA, Employer)	
)	

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 March 21, 2023 appellant filed a timely appeal from a December 19, 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 December 12, 2022 appellant, then a 64-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on November 3, 2022 she contracted COVID-19 when providing

¹ 5 U.S.C. § 8101 *et seq.*

patient care while in the performance duty. She noted that her last day of work was November 3, 2022 and that she experienced a sore throat, cough, and low-grade fever on November 5, 2022. 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 December 12, 2022. Appellant returned to work on November 13, 2022.

In support of her claim, appellant submitted a November 7, 2022 note by Michael Harvey, a physician assistant, who indicated that she first reported an onset of COVID-related symptoms on November 5, 2022. Mr. Harvey anticipated that she would be able to return to regular duties, effective November 13, 2022.

A polymerase chain reaction (PCR) test result dated November 8, 2022 indicated a positive result for COVID-19.

By decision dated December 19, 2022, OWCP denied appellant's claim for COP, finding that she had failed to report the November 3, 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 compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to the 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 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 *Supra* note 1 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).

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 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 December 12, 2022, alleging that on November 3, 2022 she was exposed to COVID-19 while in the performance of duty. She noted on the claim form that her last day of work had been November 3, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was November 3, 2022.⁷ As appellant filed her Form CA-1 on December 12, 2022 more than 30 days after the November 3, 2022 date of injury, the Board finds that she has not met her burden of proof.

CONCLUSION

The Board finds that appellant has not met her 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 December 19, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 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