

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

_____)	
S.S., Appellant)	
)	
and)	Docket No. 23-0815
)	Issued: October 25, 2023
U.S. POSTAL SERVICE, BRADLEY CARRIER)	
ANNEX POST OFFICE, Milwaukee, WI,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On May 17, 2023 appellant filed a timely appeal from a May 3, 2023 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 his burden of proof to establish entitlement to continuation of pay (COP).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference.² The relevant facts are as follows.

On January 15, 2021 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 1, 2020 he injured his left knee and lower back when he slipped and fell backward when walking down a ramp while in the performance of duty.³ He did not stop work.

OWCP, by development letter dated March 15, 2021, informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In response to OWCP's request, appellant submitted medical evidence and an additional narrative statement describing how his injury occurred. The evidence of record established that he underwent diagnostic testing and conservative treatment.

By decision dated April 14, 2021, OWCP accepted that the September 3, 2020 incident occurred as described. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a causal relationship between the accepted employment incident and his diagnosed medical conditions.

On April 26, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 10, 2021, OWCP denied modification of its prior decision.

Appellant appealed to the Board. By order dated October 28, 2021, the Board set aside the August 10, 2021 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx595 and xxxxxx044 and issue a *de novo* merit decision on his traumatic injury claim.⁴

OWCP subsequently administratively combined OWCP File Nos. xxxxxx595 and xxxxxx044, with the latter serving as the master file.

² *Order Remanding Case*, Docket No. 21-1407 (issued March 8, 2023).

³ OWCP assigned the current claim OWCP File No. xxxxxx044. The record reflects that appellant has a previously accepted traumatic injury claim under OWCP File No. xxxxxx595 for sprain of left knee.

⁴ *Supra* note 2.

By decision dated May 3, 2023, OWCP accepted the claim for unspecified internal derangement of the left knee.

In a separate decision also dated May 3, 2023, OWCP denied appellant's claim for COP, finding that he had failed to report the September 3, 2020 employment injury on a form approved by OWCP within 30 days, as required. It advised him that the denial of COP did not affect his entitlement to compensation.

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.⁵ This latter section provides that written notice of injury shall be given within 30 days.⁶ The context of section 8122 makes clear that this means within 30 days of the injury.⁷

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.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP.

Appellant filed written notice of his traumatic injury on January 15, 2021 which was more than 30 days after his September 1, 2020 employment injury. Sections 8118(a) and 8122(a)(2) of FECA specify that notice of injury shall be given in writing within 30 days after the injury.⁹ The Board thus finds that OWCP properly denied COP as appellant did not file his claim within the requisite 30 days from the date of injury.¹⁰

⁵ *Supra* note 1 at § 8118(a).

⁶ *Id.* at § 8122(a)(2).

⁷ *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).

⁸ 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).

⁹ 5 U.S.C. §§ 8118(a), 8122(a)(2).

¹⁰ 20 C.F.R. § 10.210(a); *T.N.*; Docket No. 21-0402 (issued January 31, 2022); *J.S.*, *supra* note 7.

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.

ORDER

IT IS HEREBY ORDERED THAT the May 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 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