

FACTUAL HISTORY

On March 16, 2023 appellant, then a 60-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2022 he contracted COVID-19 while in the performance of duty. He related that he was feeling sick, went to an emergency room, was tested, and was told he had COVID-19. Appellant stopped work on August 26, 2022 and returned on September 6, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, but that the injury was not reported on a Form CA-1 within 30 days following injury.

In support of his claim, appellant submitted a test result dated August 26, 2022, which indicated that the test was positive for COVID-19.

By decision dated March 20, 2023, OWCP denied appellant's claim for COP, finding that he had not reported the August 26, 2022 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that the decision affected only his entitlement to COP and did not affect his 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.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,⁶ and considers the date of last exposure prior to the medical evidence establishing the

² *Id.* 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).

⁶ *See* 20 C.F.R. § 10.5(ee).

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.”⁷

ANALYSIS

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

The record reflects that appellant filed written notice of his traumatic injury on a Form CA-1 on March 16, 2023, alleging that on August 26, 2022 he contracted COVID-19 while in the performance of duty. Appellant stopped work on August 26, 2022.

As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was August 26, 2022.⁸ As appellant filed his Form CA-1 on March 16, 2023, more than 30 days after the August 26, 2022 date of injury, the Board finds that he is not entitled to COP.⁹

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 his burden of proof to establish entitlement to COP.

⁷ 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.

⁸ *Id.*

⁹ *A.H.*, Docket No. 23-0171 (issued June 16, 2023); *see A.G.*, Docket No. 20-0942 (issued February 14, 2022).

ORDER

IT IS HEREBY ORDERED THAT the March 20, 2023 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

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

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