

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

D.D., Appellant	)	
	)	
and	)	Docket No. 21-1425
	)	Issued: September 12, 2023
U.S. POSTAL SERVICE, GLENBROOK POST	)	
OFFICE, Stamford, CT, Employer	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On September 6, 2021 appellant filed a timely appeal from an April 1, 2021 merit decision and a May 13, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-1425.

On June 9, 2020 appellant, then a 57-year-old postage due technician, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2020 she contracted COVID-19 while in the performance of duty. She stopped work on April 6, 2020.

In support of her claim, appellant submitted factual and medical evidence, including a laboratory test result, dated April 4, 2020, which was positive for COVID-19.

By decision dated January 11, 2021, OWCP accepted appellant's claim for COVID-19.

By decision dated January 12, 2021, OWCP denied appellant's claim for continuation of pay (COP), finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted employment injury. It noted that the denial of COP did not preclude her from filing a claim for disability due to the effects of the accepted employment injury.

On January 26, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. She subsequently submitted additional factual evidence with regard to the filing of her claim.

By decision dated April 1, 2021, OWCP's hearing representative affirmed the January 12, 2021 decision.

On May 3, 2021 appellant requested reconsideration.

By decision dated May 13, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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.<sup>1</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>3</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 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>4</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>5</sup>

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<sup>1</sup> 5 U.S.C. § 8118(a).

<sup>2</sup> *Id.* at § 8122(a)(2).

<sup>3</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).

<sup>4</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>5</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.

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.<sup>6</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>7</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the May 13 and April 1, 2021 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: September 12, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *Order Remanding Case, D.P.*, Docket No. 23-0224 (issued July 19, 2023); *Order Remanding Case, P.A.*, Docket No. 23-0165 (issued June 14, 2023); *Order Remanding Case, L.J.*, Docket No. 22-1041 (issued December 30, 2022); *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022).

<sup>7</sup> In light of the Board's disposition regarding the merit issue, the nonmerit issue is rendered moot.