

against the bin and placed his body weight on the container. Appellant related that he heard a pop and experienced severe pain in the right ankle that worsened with activity.

January 21, 2016 x-rays of appellant's right ankle read by Dr. Jeffrey D. Kurzon, Board-certified in diagnostic radiology, revealed no fracture or dislocation, evidence of old trauma to the ankle, mild hallux valgus deformity, and degenerative joint disease.

In a March 19, 2019 decision, OWCP accepted the claim for sprain of unspecified ligament of right ankle, initial encounter. On May 12, 2020 it expanded acceptance of the claim to include primary osteoarthritis of the right ankle and osteochondritis dissecans of the talus, right ankle.

On February 10 and 22, 2021 appellant filed Forms CA-7 for continuation of pay (COP) for the period December 30, 2015 through February 15, 2016.

In a February 5, 2016 report, Dr. Yong Chen, a Board-certified internist, noted that appellant's right ankle sprain had resolved and he could return to full duty.

By decision dated April 21, 2021, OWCP denied the claim for COP for the period December 30, 2015 through February 15, 2016. It found that medical evidence was not submitted within 10 calendar days after the claim was submitted and the medical evidence did not indicate that appellant was disabled for regular duty.

On May 11, 2021 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. By decision dated September 3, 2021, OWCP's hearing representative affirmed the April 21, 2021 decision, finding that the evidence did not support that appellant was disabled for work during the period of December 30, 2015 through February 15, 2016.

On May 20, 2022 appellant, through counsel, requested reconsideration. Appellant resubmitted the January 21, 2016 x-rays of his right ankle read by Dr. Kurzon, the February 5, 2016 report from Dr. Chen, who noted that appellant's right ankle sprain had resolved, and he could return to full duty. OWCP also received January 16, 2016 emergency department records from a physician assistant.

In support of his request for reconsideration appellant also submitted a November 15, 2021 report from Dr. Robert R. Reppy, a general practitioner and treating physician. Dr. Reppy related that appellant's claim for COP had been denied because appellant not established that he was totally disabled during the claimed time period as a result of his accepted condition of right ankle strain. He related that appellant was not disabled due to a right ankle strain, but rather, by damaged cartilage in appellant's bilateral ankles, which was diagnosed as osteoarthritis of the right talus.

By decision dated August 2, 2022, OWCP denied modification of the September 3, 2021 decision. It found that appellant sustained a traumatic work-related injury which was filed on Form CA-1 within 30 days of the injury; however, the medical evidence did not support injury-related disability until January 21, 2016, when Dr. Chen ordered an ankle brace and restricted appellant from prolonged standing, walking, bending, or squatting for two weeks as a result of the accepted right ankle strain.

The Board has duly considered the matter and finds that OWCP improperly determined that appellant was not entitled to COP.

FECA's implementing regulations state that an agency must continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

“(1) the disability was not caused by a traumatic injury; (2) the employee is not a citizen of the United States or Canada; (3) no written claim was filed within 30 days from the date of injury; (4) the injury was not reported until after employment has been terminated; (5) the injury occurred off the employing agency's premises and was otherwise not within the performance of official duties; (6) the injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or (7) work did not stop until more than 45 days following the injury.”³

The Board has previously found that the denial of COP is erroneous, if it was not based on any of the categories outlined in the FECA's implementing regulations. Therefore, the Board has reversed an OWCP decision, which was based on a finding that the medical evidence of record did not establish temporary total disability, and the Board found that OWCP must pay COP.⁴

In the present case, OWCP found that the claimant was not entitled to COP for the period December 30, 2015 through February 15, 2016, because the medical evidence did not establish that he was temporarily totally disabled from work during this period. It did not deny appellant's claim for COP based on the categories outlined in section 10.220 of FECA's implementing regulations.⁵ Therefore, upon return of the case record OWCP shall pay appellant COP during the period as set forth in this order.

³ 20 C.F.R. § 10.220. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.11 (June 2012).

⁴ *S.D.*, Docket No. 19-1819 (issued July 2, 2020).

⁵ *Id.*

IT IS HEREBY ORDERED THAT the August 2, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: September 1, 2023
Washington, DC

Alec J. Koromilas, 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