

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

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**F.T., Appellant** )  
 )  
**and** ) **Docket No. 23-0752**  
 ) **Issued: September 28, 2023**  
**DEPARTMENT OF VETERANS AFFAIRS,** )  
**NEWINGTON, VA CLINIC, Newington, CT,** )  
**Employer** )  
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 2, 2023 appellant filed a timely appeal from a March 20, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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).

**FACTUAL HISTORY**

On March 6, 2023 appellant, then a 65-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2023 he was exposed to COVID-19 in the

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on January 6, 2023 and returned on January 17, 2023.

Appellant submitted a medical note dated January 12, 2023 and signed by Karen Sauer, a registered nurse. The note indicated that he had tested positive for COVID-19.

In a letter dated March 13, 2023, the employing establishment controverted appellant's claim, contending that the injury was not reported on an approved form within 30 days of the injury.

By decision dated March 20, 2023, OWCP denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of his alleged January 6, 2023 employment injury. It advised him that this decision only concerned 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.<sup>2</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</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 is 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>5</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

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</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>5</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).

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>6</sup>

### **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 6, 2023 alleging that on January 6, 2023 he was exposed to COVID-19 in the performance of duty. He stopped work on January 6, 2023 and returned on January 17, 2023. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was January 6, 2023.<sup>7</sup> As appellant filed his Form CA-1 on March 6, 2023 more than 30 days after the January 6, 2023 date of injury, the Board finds that he has not met his burden of proof.

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.

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<sup>6</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.

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 20, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 28, 2023  
Washington, DC

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

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

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