

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

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<b>T.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0830</b>
	)	<b>Issued: April 19, 2024</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Coppell, TX, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 5, 2022 appellant filed a timely appeal from a March 7, 2022 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.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

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

<sup>2</sup> The Board notes that, following the May 5, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On February 19, 2022 appellant, then a 62-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2022 she contracted COVID-19 after working in the rewrap area in which another employee tested positive while in the performance of duty. She stopped work on January 11, 2022, and returned to work on February 7, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In support of her claim, appellant submitted a note dated January 11, 2022 which indicated that she tested positive for COVID-19. The note was signed by a healthcare professional whose signature was illegible.

By decision dated March 7, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged January 11, 2022 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her 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>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</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>6</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

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>6</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).

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>7</sup>

### ANALYSIS

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

Appellant filed written notice of her traumatic injury on a Form CA-1 on February 19, 2022. By decision dated March 7, 2022, OWCP denied appellant’s request for COP, as her claim was not filed within 30 days of the January 11, 2022 employment injury. It noted that the denial of COP did not affect her entitlement to other compensation benefits.

As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which, in this case, was January 11, 2022.<sup>8</sup> Because appellant filed her Form CA-1 on February 19, 2022, more than 30 days after the January 11, 2022 date of injury, the Board finds that she has not met her 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 her burden of proof to establish entitlement to COP.

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<sup>7</sup> FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 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>8</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 19, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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