

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

_____	)	
<b>J.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0447</b>
	)	<b>Issued: February 27, 2024</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>WEST HAVEN VA MEDICAL CENTER,</b>	)	
<b>West Haven, CT, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On February 3, 2023 appellant filed a timely appeal from a January 23, 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 her burden of proof to establish entitlement to continuation of pay (COP).

**FACTUAL HISTORY**

On January 11, 2023 appellant, then a 56-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2022 she contracted COVID-19 while in

---

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

the performance of duty, noting that her last date at work was November 4, 2022. On the reverse side of the claim form, appellant's supervisor, R.O., acknowledged that appellant was injured in the performance of duty, but controverted COP because the claim was not reported on a Form CA-1 within 30 days of the injury. The supervisor indicated that appellant stopped work on November 5, 2022 and returned to work on November 13, 2022.

In support of her claim, appellant submitted an illegible medical report.

In a January 12, 2023 letter, the employing establishment asserted that the correct date of injury was November 4, 2022, as it was the date of appellant's last exposure to other people in the workplace prior to the onset of symptoms and/or a positive test result.

By decision dated January 23, 2023, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted employment incident. It noted that her entitlement to compensation benefits was not affected.

### **LEGAL PRECEDENT**

Section 8118(a) of the Federal Employees' Compensation Act (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/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 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 medical evidence

---

<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).

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 her burden of proof to establish entitlement to COP.

The record reflects that appellant filed written notice of her traumatic injury on a Form CA-1 on January 11, 2023 alleging that on November 5, 2022 she contracted COVID-19 while in the performance of duty. She noted that her last date at work was November 4, 2022. In a January 12, 2023 letter, the employing establishment asserted that the correct date of injury was November 4, 2022, as it was the date of appellant’s last exposure to other people in the workplace prior to the onset of symptoms and/or a positive test result. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which, in this case, was November 4, 2022.<sup>7</sup> As appellant filed her Form CA-1 on January 11, 2023 more than 30 days after the November 4, 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.

---

<sup>6</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>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 27, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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