

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

S.G., Appellant)	
)	
and)	Docket No. 23-1033
)	Issued: February 14, 2024
U.S. POSTAL SERVICE, EL DORADO)	
SPRINGS POST OFFICE,)	
El Dorado Springs, MO, Employer)	
)	

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 July 27, 2023 appellant filed a timely appeal from a February 3, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 3, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* 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 May 6, 2022 appellant, then a 68-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 26, 2020 he sustained a right shoulder injury when he slipped on gumballs that had fallen from a tree and fell down while in the performance of duty.

In a May 10, 2022 letter, D.S., an employing establishment occupational health claims specialist, controverted appellant's claim alleging that appellant did not timely file the claim.

In a May 10, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated June 23, 2022, OWCP accepted that the September 26, 2020 employment incident occurred as alleged and that a medical condition was diagnosed. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted September 26, 2020 employment incident. Therefore, OWCP concluded that the requirements had not been met to establish an injury.

On July 21, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a statement containing the timeline of events. He indicated that on September 26, 2020 the injury occurred, and he informed his supervisor. Appellant explained that no later than October 15, 2020, he told the Postmaster. He noted that he was never informed that he had 30 days to file from date of injury.

By decision dated October 14, 2022, OWCP set aside the June 23, 2022 decision, and remanded the case for further development of the medical evidence.

By decision dated February 3, 2023, OWCP accepted appellant's claim for right shoulder rotator cuff tear, resolved.

By separate decision also dated February 3, 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 the accepted September 26, 2020 employment injury. It further noted that the decision affected only 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.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

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.⁶

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 May 6, 2022, alleging that on September 26, 2020 he injured his right shoulder when he slipped and fell down while in the performance of duty. As noted above, to be eligible for COP, a claimant must file a Form CA-1 within 30 days of the date of injury.⁷ As appellant filed his Form CA-1 on May 6, 2022, more than 30 days after the September 26, 2020 date of injury, the Board finds that he is not entitled to COP.⁸

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.

³ *Id.* at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

⁶ 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).

⁷ *Id.*

⁸ *A.H.*, Docket No. 23-0171 (issued June 16, 2023).

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 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