

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

L.C., Appellant)	
)	
and)	Docket No. 22-1056
)	Issued: January 25, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST NEW YORK VETERANS' HEALTH)	
ADMINISTRATION, Buffalo, NY, Employer)	
)	

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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 10, 2022 appellant filed a timely appeal from a June 27, 2022 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.

ISSUE

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

FACTUAL HISTORY

On June 7, 2022 appellant, then a 48-year-old medical clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 25, 2022 she contracted COVID-19 after working directly with

¹ 5 U.S.C. § 8101 *et seq.*

patients during the prior week, while in the performance of duty. She stopped work on April 25, 2022 and returned to work on May 2, 2022.

By decision dated June 13, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her April 25, 2022 injury on an OWCP-approved form within 30 days of the date of injury.

On June 21, 2022 appellant requested reconsideration. In a June 20, 2022 statement, she explained that she had tested positive for COVID-19 on April 25, 2022, and was told to quarantine and return for retesting on April 30, 2022. Appellant noted that she was released to return to work on May 2, 2022. Approximately one month later, she and her supervisor completed the Form CA-1 together and she was not informed that her claim form had to be filed within 30 days of the date of injury for entitlement to COP.

In a June 16, 2022 letter, appellant's supervisor asserted that the documentation that she provided to appellant regarding filing a workers' compensation claim did not include information regarding the 30-day filing period for COP. The supervisor argued that it was, therefore, inappropriate to deny appellant's claim for COP.

By decision dated June 27, 2022, OWCP denied modification of the June 13, 2022 decision.

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 FECA.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the date of injury.⁴

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.⁵

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

² *Supra* note 1 at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *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).

⁵ 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).

(see 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the 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.”⁶

ANALYSIS

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

The record reflects that appellant filed a Form CA-1 on June 7, 2022, alleging that on April 25, 2022 she was exposed to COVID-19 after working directly with patients. She stopped work on April 25, 2022.

As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was April 25, 2022. As appellant filed her Form CA-1 on June 7, 2022, more than 30 days after the April 25, 2022 date of injury, the Board finds that she has not met her burden of proof.⁷

The Board, therefore, finds that OWCP properly denied COP as appellant did not file her claim within the requisite 30 days from the date of injury.

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.

⁶ 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.

⁷ The Board notes that appellant and her supervisor contended that appellant was not made aware of the 30-day filing period for COP. However, the Board has held that neither appellant's lack of awareness of the time limitation, or error in instruction by the employing establishment, can entitle a claimant to continuation of pay who has not filed a written claim within 30 days of the date of injury. See *M.C.*, Docket No. 13-0491 (issued May 15, 2013).

ORDER

IT IS HEREBY ORDERED THAT the June 27, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board