

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

_____)	
J.S., Appellant)	
)	
and)	Docket No. 23-0790
)	Issued: January 29, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
TOGUS VA MEDICAL CENTER, Augusta, ME,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On May 12, 2023 appellant filed a timely appeal from March 2 and 7, 2023 merit decisions 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.

ISSUES

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

FACTUAL HISTORY

On September 8, 2022 appellant, then a 42-year-nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 2, 2022 she contracted COVID-19 when she reported to her duty station for a meeting and was exposed to veterans and employees while sitting in a hallway

¹ 5 U.S.C. § 8101 *et seq.*

working on her computer in the performance of duty. On the reverse side of the claim form, appellant's supervisor reported that appellant stopped work on August 15, 2022 and returned to work on September 1, 2022. A report of work status (Form CA-3), prepared by the employing establishment's injury compensation specialist, indicated that appellant stopped working on August 15, 2022.

In support of her claim, appellant submitted a polymerase chain reaction (PCR) test result dated August 15, 2022, which indicates that she was tested at the employing establishment facility on that date, and tested positive for COVID-19.

On September 9, 2022 the employing establishment controverted COP, noting that appellant did not file a Form CA-1 until September 8, 2022, which was not within 30 days of the August 2, 2022 date of injury.

By decision dated September 12, 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 the alleged date of injury.

On September 14, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On August 26, 2022 Dr. Eric Mukai, a Board-certified internist, treated appellant for fever, cough, fatigue, and headache related to COVID-19. He diagnosed COVID-19, fatigue, fever, and myalgias. In a return-to-work note of even date, Dr. Mukai excused appellant from work from August 22 through September 1, 2022.

On September 14, 2022 an employing establishment injury compensation specialist requested that appellant's supervisor clarify the details of her exposure on the date of injury. She advised that appellant alleged her exposure to COVID-19 occurred at 9:00 a.m. on August 2, 2022; however, the employing establishment indicated that appellant's meeting was scheduled for 1:00 p.m. and there was no expectation for her to be at work any earlier than that time. The injury compensation specialist asserted that at 9:00 a.m. appellant was not performing tasks related to her work duties.

On September 14, 2022 D.H., appellant's supervisor indicated that on August 2, 2022 appellant attended a meeting at the employing establishment from 1:00 p.m. to 2:00 p.m. She noted that four people were in attendance at the meeting and all attendees wore masks and were seated a distance away from each other. D.H. advised that appellant was recently transferred to the unit and the meeting was scheduled for the leadership to meet her.

By decision dated October 6, 2022, OWCP accepted appellant's claim for novel coronavirus.

On January 4, 2023 an OWCP hearing representative indicated that appellant did not appear at the oral hearing scheduled for January 3, 2023, that appellant wanted to pursue the appeal, and that she would proceed with a review of the written record.

By decision dated January 30, 2023, the hearing representative reversed OWCP's decision dated September 12, 2022. She determined that appellant's date of last exposure was August 15, 2022, as that was the date she stopped work. OWCP's hearing representative found that appellant signed and submitted a Form CA-1 for a traumatic injury on September 8, 2022, which was within 30 days of August 15, 2022, and therefore her claim was timely filed and she was entitled to COP.

On February 1, 2023 the employing establishment disagreed with the hearing representative's January 30, 2023. It noted that appellant was a 100 percent telework employee and only reported to a duty station on rare occasions. In this instance, the only time appellant carried out duties that required contact with patients, members of the public, or coworkers was on August 2, 2022 for a set meeting with three of her coworkers. The meeting was held at 1:00 p.m. in an office with each person sitting approximately four feet apart. Appellant's presence at the premises four hours prior to the commencement of the meeting was not required by the employer and did not relate to preparatory activities reasonably incidental to her employment.

On February 2, 2023 D.H., appellant's supervisor, reported that "Prior to August 15, [2022]," appellant's last day of reporting to work at an employing establishment facility was August 2, 2022.

On its own motion, by decision dated March 2, 2023, OWCP's Branch of Hearings and Review set aside and vacated OWCP's authorization for COP. The hearing representative found that appellant was hired as a telework employee, that she reported to her duty station on August 2, 2022. The hearing representative determined that written notice of injury on an approved form occurred on September 8, 2022 more than 30 days after her August 2, 2022 injury.

By decision dated March 7, 2023, OWCP denied appellant's claim for COP, finding that she had not reported that her injury on an OWCP-approved form within 30 days of her August 2, 2022 employment injury. It noted that appellant's entitlement to compensation benefits was unaffected.

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

² *Id.* 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).

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 (*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 OWCP has 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 September 8, 2022, alleging that on August 2, 2022 she was exposed to COVID-19 while in the performance of duty. On the reverse side of the claim form, appellant’s supervisor reported that appellant stopped work on August 15, 2022, and returned to work on September 1, 2022. The Form CA-3, prepared by the employing establishment’s injury compensation specialist, also establishes that appellant last worked on August 15, 2022, which was also the same date that she reported to the employing establishment’s facility to undergo the PCR test. While the employing establishment argued that appellant was a 100 percent teleworker and was last working at its facility on August 2, 2022, the PCR test establishes that she was at the employing establishment facility on August 15, 2022. Therefore, the Board finds that her date of last exposure was August 15, 2022.

As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure.⁷ As appellant filed her Form CA-1 on September 8, 2022, within 30 days from August 15, 2022, she has met her burden of proof.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish entitlement to COP.

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).

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 *Id.*

ORDER

IT IS HEREBY ORDERED THAT the March 2 and 7, 2023 decisions of the Office of Workers' Compensation Programs are reversed.

Issued: January 29, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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