

¹ 5 U.S.C. § 8101 *et seq.*

injuries when he was involved in a motor vehicle accident while in the performance of duty. He stopped work on the date of injury. On the reverse side of the claim form, appellant's supervisor, P.P., controverted his request for COP because notice of the injury had not been reported within 30 days, noting that the claim had not been filed with the employing establishment. She stated that appellant filed the claim on July 29, 2022 through the Employees' Compensation Operations & Management Portal (ECOMP) with another agency.

The record contains an ECOMP User ID verified dated July 29, 2022 noting the user had access to OWCP File No. xxxxxx128. An undated ECOMP document noted appellant's name and the agency as the Congressional Budget Office.

Appellant submitted medical evidence in support of his claim.

OWCP, by development letter dated September 9, 2022, 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.

In statement dated September 28, 2022, appellant recounted that his vehicle was rear-ended by another vehicle on July 8, 2022 and that a police report had been filed. He noted that he briefly lost consciousness and was transported to the emergency room by ambulance. Appellant also submitted additional medical evidence.

By decision dated October 21, 2022, OWCP accepted appellant's claim for head contusion, left knee and cervical ligaments sprains, muscle and tendon of back wall of thorax strain, and lower back muscle, fascia, and tendon strain.

In a separate decision also dated October 21, 2022, OWCP denied appellant's claim for COP, finding that he had failed to report the July 8, 2022 employment injury on a form approved by OWCP within 30 days, as required. It advised him that the denial of COP did not affect his entitlement to compensation, and that he could, therefore, file a claim for compensation (Form CA-7) for lost wages due to his accepted employment injury.

OWCP continued to receive medical and factual evidence.

On November 2, 2022 appellant requested reconsideration. In support of his request, he submitted an illegible ECOMP document which he claimed showed his claim had been timely filed.

By decision dated November 9, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim. It related that appellant had neither raised substantive legal questions nor provided new and relevant evidence warranting merit review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

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.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 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

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁶ OWCP's procedures provide that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contain words of claim, can be used to satisfy timely filing requirements.⁷

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for a decision.

OWCP found that appellant's claim for COP was untimely because he filed his claim more than 30 days after his July 8, 2022 work injury. The Board, however, finds that the record contains conflicting evidence on whether appellant timely filed his claim. On the Form CA-1 appellant's supervisor reported that appellant did not file a claim with the employing establishment within 30 days from the date of injury, but did file his claim through ECOMP with another agency on July 29, 2022. In addition, the record shows that appellant was assigned OWCP File No. xxxxxx128 through an ECOMP User ID verified document dated July 29, 2022. The ECOMP User ID verified document informed appellant that he had access to OWCP File No. xxxxxx128. The Board also notes that another document of record appears to list the Congressional Budget Office as appellant's employing establishment, but it is unclear how the notation of the employing agency was generated.

On remand, OWCP should consider the evidence dated July 29, 2022 used to assign appellant OWCP File No. xxxxxx128 through ECOMP, and the ECOMP User ID verification to

² *Id.* at § 8118(a).

³ *Id.* at 8122(a)(2).

⁴ *A.G.*, Docket No. 21-0817 (issued July 26, 2022); *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 J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849, 855 (1993); *William E. Ostertag*, 33 ECAB 1925(1982).

⁶ *Id.* at § 10.210(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5 (June 2012).

determine whether he filed a timely request for COP, indicating the employing establishment as his employer. After such other further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for a decision.⁸

ORDER

IT IS HEREBY ORDERED THAT the October 21 and November 9, 2022 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 22, 2024
Washington, DC

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

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

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

⁸ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.