

<sup>2</sup> The Board notes that, following the May 13, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

## **ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP) and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of her claim for COP, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On June 9, 2020 appellant, then a 57-year-old miscellaneous clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 3, 2020, she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, appellant's supervisor controverted appellant's claim for COP as she had not reported the injury on an OWCP-approved form within 30 days of the date of injury.

In support of her claim, appellant submitted an April 4, 2020 polymerase chain reaction (PCR) test result, which indicated that she tested positive for COVID-19.

In a January 5, 2021 report, Dr. L. Tracy Silva, a Board-certified internist, recounted that appellant had been off work for the period April 7 through July 5, 2020 "due to respiratory failure requiring mechanical ventilation as a result of COVID-19 infection." Following treatment in a hospital intensive care unit, she was transferred to acute care rehabilitation, and discharged home on May 23, 2020. Appellant "continued to require home nursing care and physical therapy due to myopathy/neuropathy related to prolonged mechanical ventilation and was stable to return to work" on July 6, 2020. Dr. Silva opined that appellant had contracted COVID-19 while at work as she had no other relevant contacts or exposures.

By decision dated January 11, 2021, OWCP accepted the claim for COVID-19.

By decision dated January 12, 2021, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of her alleged April 3, 2020 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

Thereafter, OWCP received a May 22, 2020 progress note wherein Dr. Edwin F. Richter, III, a Board-certified physiatrist, recounted appellant's participation in rehabilitative therapies.

On January 31, 2021 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received a series of March 1, 2021 reports wherein Dr. Alan Weiner, Board-certified in emergency medicine, recounted appellant's symptoms of right ear pain and a sore throat. Appellant tested negative for COVID-19.

In a March 2, 2021 statement, the employing establishment controverted appellant's claim for COP, asserting that she had not reported the injury on a Form CA-1 within 30 days of the injury.

In a March 28, 2021 statement, appellant asserted that she was not informed she could file a claim until June 2020, after she had been discharged from the hospital. She contended that the union should have filed a Form CA-1 on her behalf, or that the employing establishment should have instructed her family to file the Form CA-1 on her behalf.

By decision dated April 1, 2021, OWCP's hearing representative affirmed the January 12, 2021 denial of COP.

On May 3, 2021 appellant requested reconsideration. In her April 25, 2021 statement, she summarized her history of injury and treatment. Appellant asserted that she notified the employing establishment of her injury within 30 days of the April 3, 2021 injury as she telephoned the employing establishment on April 6, 2021 to report that she would not be at work on April 7, 2021. She contended that as the employing establishment failed to fulfill its responsibility under 20 C.F.R. § 10.211 to file a Form CA-1 on her behalf after being notified of the injury, OWCP would not uphold termination of COP.

By decision dated May 13, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

### **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.<sup>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</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>6</sup>

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<sup>3</sup> *Supra* note 1 at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>6</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).

### **ANALYSIS -- ISSUE 1**

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

Appellant filed written notice of her traumatic injury on a Form CA-1 on June 9, 2020. By decision dated January 12, 2021, OWCP denied her request for COP, as her claim was not filed within 30 days of the April 3, 2020 employment injury. Appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated April 1, 2021, OWCP's hearing representative affirmed the January 12, 2021 decision.

As noted above, to be eligible for COP, a claimant must file a Form CA-1 within 30 days of the date of injury.<sup>7</sup> Because appellant filed her Form CA-1 on June 9, 2020, more than 30 days after the April 3, 2020 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.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his or her own motion or on application.<sup>8</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>9</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>10</sup> If it chooses to grant reconsideration, it reopens

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<sup>7</sup> *Id.* See also *A.B.*, Docket No. 25-0205 (issued January 28, 2025).

<sup>8</sup> 5 U.S.C. § 8128(a); see *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>9</sup> 20 C.F.R. § 10.606(b)(3); see *M.S.*, Docket No. 18-1041 (issued October 25, 2018); *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>10</sup> 20 C.F.R. § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

and reviews the case on its merits.<sup>11</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>12</sup>

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record<sup>13</sup> and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128 (a).

In support of her request for reconsideration, appellant again argued that the employing establishment was obligated to assist with completing her Form CA-1. The Board finds that this argument is duplicative of an argument previously raised and considered by OWCP. The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record does not constitute a basis for reopening a case.<sup>15</sup> Accordingly, appellant has not established a basis for further merit review under the first and second above-noted requirements of 20 C.F.R. § 10.606(b)(3).<sup>16</sup>

As appellant submitted no new evidence in support of her request for reconsideration, she is not entitled to a review of the merits based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>17</sup>

The Board, accordingly, finds that as appellant has not met any of the requirements under 20 C.F.R. § 10.606(b)(3), pursuant to 20 C.F.R. § 10.608 OWCP properly denied merit review.

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<sup>11</sup> *Id.* at § 10.608(a); *see D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>12</sup> *Id.* at § 10.608(b); *see T.V.*, Docket No. 19-1504 (issued January 23, 2020); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

<sup>13</sup> *N.L.*, Docket No. 18-1575 (issued April 3, 2019); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>14</sup> *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*; 31 ECAB 224, 225 (1979).

<sup>15</sup> *I.J.*, Docket No. 19-1278 (issued December 30, 2019); *F.D.*, Docket No. 19-0890 (issued November 8, 2019); *see J.B.*, Docket No. 18-1531 (issued April 11, 2019); *Eugene F. Butler*, *supra* note 13.

<sup>16</sup> *Supra* note 9.

<sup>17</sup> *See L.C.*, Docket No. 25-0444 (issued April 23, 2025).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish entitlement to COP. The Board also finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 1 and May 13, 2021 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 29, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board