

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

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<b>G.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0726</b>
	)	<b>Issued: September 12, 2025</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>UPSTATE NEW YORK HEALTHCARE</b>	)	
<b>SYSTEM, BUFFALO VA MEDICAL CENTER,</b>	)	
<b>Buffalo, NY, Employer</b>	)	
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*Appearances:*  
Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
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 23, 2025 appellant, through counsel, filed a timely appeal from a February 4, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that, following the February 4, 2025 decision, OWCP received additional evidence. 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.*

## **ISSUE**

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

## **FACTUAL HISTORY**

This case was previously before the Board on a different issue.<sup>4</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 9, 2024 appellant, then a 59-year-old registered nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 19, 2023 she injured her right shoulder and arm, neck, and back while in the performance of duty. She noted that she fell from a stretcher while being unloaded from an ambulance as a result of dizziness and mental fogging following a COVID-19 vaccination. Appellant stopped work on the date of injury and returned to full-duty work, six hours per day, on September 25, 2023. OWCP accepted the claim for dizziness, giddiness, right shoulder joint dislocation, right shoulder sprain, and adverse effect of viral vaccination. It paid appellant compensation for appropriate disability on the supplemental rolls effective August 23, 2023.

By decision dated January 25, 2024, 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 August 19, 2023 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

On January 20, 2025 appellant, through counsel, requested reconsideration of OWCP's January 25, 2024 decision. In support thereof, appellant submitted a statement dated January 10, 2025, in which she described the symptoms she experienced after receiving a COVID-19 vaccination and the circumstances surrounding the August 19, 2023 employment injury. She also noted that she did not initially believe that her injury was compensable under FECA until a union steward approached her in December 2023 about filing a claim. On that basis, appellant indicated that she filed a Form CA-1 on January 9, 2024 for the August 19, 2023 employment injury.

In a letter dated January 24, 2025, the employing establishment 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 a letter dated February 2, 2025, appellant, through counsel, asserted that justice dictated a finding of entitlement to COP.

By decision dated February 4, 2025, OWCP denied modification of the January 25, 2024 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

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<sup>4</sup> Docket No. 25-0513 (issued July 7, 2025).

this title.<sup>5</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>6</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>7</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>8</sup>

### **ANALYSIS**

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

Appellant filed written notice of her August 19, 2023 traumatic injury on a Form CA-1 on January 9, 2024. 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>9</sup> Because appellant filed her Form CA-1 on January 9, 2024, more than 30 days after the August 19, 2023 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.

### **CONCLUSION**

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

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<sup>5</sup> *Supra* note 2 at § 8118(a).

<sup>6</sup> *Id.* at § 8122(a)(2).

<sup>7</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>8</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).

<sup>9</sup> *Id.* *See also A.B.*, Docket No. 25-0205 (issued January 28, 2025).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 4, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2025  
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