

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

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**J.S., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
PALO ALTO VA MEDICAL CENTER,  
Palo Alto, CA, Employer**  
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**Docket No. 22-1189  
Issued: May 4, 2023**

*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 August 11, 2022 appellant filed a timely appeal from July 18 and August 4, 2022 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 July 12, 2022 appellant, then a 58-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2022 she contracted COVID-19 through

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

exposure from a coworker while in the performance of duty. On the reverse side of the claim form, her supervisor acknowledged that she was injured in the performance of duty. Appellant stopped work on June 2, 2022 and returned to work on June 13, 2022.

Appellant submitted a polymerase chain reaction (PCR) test result, dated June 3, 2022, which revealed that she tested positive for COVID-19.

By decision dated July 18, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the June 2, 2022 injury on an OWCP-approved form within 30 days of the date of injury, as required. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

On August 1, 2022 appellant requested reconsideration.

In a statement dated July 26, 2022, J.M., an assistant nurse manager at the employing establishment, indicated that appellant was out of work on June 2 and 3, 2022 and from June 6 through 13, 2022 due to testing positive for COVID-19. She noted that on June 13, 2022 appellant had applied for Occupational Safety Health Administration (OSHA) Form 301 due to COVID-19 and thought that this form also covered the Form CA-1 for COVID-19. J.M. requested that OWCP reconsider the decision regarding appellant's application for COP. The OSHA Form 301 was attached.

By decision dated August 4, 2022, OWCP denied modification of the July 18, 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 this title.<sup>2</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</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

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</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 762-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

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>5</sup>

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 short (*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.”<sup>6</sup>

### ANALYSIS

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

The record reflects that appellant filed her written notice of her traumatic injury on a Form CA-1 on July 12, 2022, alleging that on June 2, 2022 she contracted COVID-19 through exposure from a co-worker while in the performance of duty. Appellant stopped work on June 2, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was June 2, 2022. The 30<sup>th</sup> day following June 2, 2022 was July 2, 2022. On reconsideration appellant’s nurse manager submitted a copy of OSHA’s Form 301 and contended that appellant filed it on June 13, 2022 with the belief that it also covered COP. The Board has held, however, that an OSHA form is not considered a claim for a period of wage loss as required by 5 U.S.C. § 8118.<sup>7</sup> As appellant filed her Form CA-1 on July 12, 2022, more than 30 days after the June 2, 2022 employment 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> 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>6</sup> 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. 11712. 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.

<sup>7</sup> *R.D.*, Docket No. 23-0046 (issued March 28, 2023); *R.J.*, Docket No. 08-2338 (issued June 9, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 18 and August 4, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 2023  
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