

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

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C.D., Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
CASTLE POINT VA MEDICAL CENTER, )  
Wappingers Falls, NY, Employer )  
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**Docket No. 23-0147**  
**Issued: May 10, 2023**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On November 10, 2022 appellant filed a timely appeal from an October 3, 2022 merit decision 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 September 26, 2022 appellant, then a 46-year-old licensed practical nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2022 she contracted COVID-19 as a result of taking care of veterans who were positive for COVID-19, while in the performance

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

of duty. On the reverse side of the claim form, M.W., appellant's supervisor, acknowledged that appellant was injured while in the performance of duty. He indicated that the employing establishment received notice of the alleged injury on September 26, 2022. M.W. did not indicate whether appellant stopped work.

An August 11, 2022 medical record from the employing establishment health unit, signed by Sidney C. Wallin, a physician assistant, noted that appellant was last at work on August 9, 2022. A COVID-19 test performed on August 9, 2022 was reported by a laboratory to be positive for COVID-19.

By decision dated October 3, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the alleged August 9, 2022 injury on an OWCP-approved form within 30 days of the date of the injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

### **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 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 shift (*see* 20 C.F.R. § 10.5(ee)), and considers the date of last exposure prior to the

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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).

<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).

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 written notice of her traumatic injury on a Form CA-1 on September 26, 2022 alleging that, on August 9, 2022, she was exposed to COVID-19 when taking care of infected veterans while in the performance of duty. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was August 9, 2022.<sup>7</sup> Because appellant filed her Form CA-1 on September 26, 2022, the Board finds that it was not filed within 30 days of the August 9, 2022 date of injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.<sup>8</sup> Accordingly, appellant is not entitled to COP.<sup>9</sup>

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>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. 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.

<sup>7</sup> *Id.*

<sup>8</sup> 5 U.S.C. §§ 8118(a), 8122(a)(2).

<sup>9</sup> *T.J.*, Docket No. 23-0003 (issued April 26, 2023); *D.R.*, Docket No. 22-0361 (issued July 8, 2022); *B.G.*, Docket No. 21-0865 (issued May 6, 2022).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 3, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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