

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

T.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
DAYTON VA MEDICAL CENTER,
Dayton, OH, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 21-1348
Issued: April 14, 2022**

Appearances:
Appellant, pro se
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 September 12, 2021 appellant filed a timely appeal from a May 11, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 11, 2021 decision, OWCP received additional evidence. However, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP) for the period February 5 through March 10, 2021.

FACTUAL HISTORY

On March 10, 2021 appellant, then a 47-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that he contracted COVID-19 on February 5, 2021 when engaged in one-on-one patient observation while in the performance of duty. He further noted that he began to develop symptoms on February 7, 2021 and tested positive for COVID-19 on February 8, 2021. On the reverse side of the claim form R.E., an employing establishment supervisor, confirmed that appellant's injury occurred while in the performance of duty. Appellant stopped work on February 5, 2021 and returned on March 10, 2021.

In support of his claim, appellant submitted a laboratory test result dated February 8, 2021, which revealed that he tested positive for COVID-19.

A February 12, 2021 note from Laurie Murray, a physician assistant, noted appellant's ongoing COVID-19 symptoms.

In hospital notes dated February 18, 2021, Dr. Michael Ady, a Board-certified emergency medicine physician, related that appellant began experiencing COVID-19 symptoms on February 7, 2021 and tested positive on February 8, 2021. He diagnosed pneumonia due to COVID-19.

A return-to-work note dated February 26, 2021 from Sharon Rodgers, a nurse practitioner, indicated that appellant should be held off work until further evaluation on March 5, 2021.

On March 5, 2021 Ms. Rodgers indicated that appellant could return to work on March 10, 2021.

In a letter of controversion dated March 22, 2021, J.K., a clinical coordinator with the employing establishment, indicated that the employing establishment was controverting appellant's claim because he worked in a non-COVID-19 unit and, therefore, did not care for COVID-19 patients on the alleged date of injury.

By decision dated May 11, 2021, OWCP accepted appellant's traumatic injury claim for COVID-19. By decision of even date, it denied appellant's claim for COP, finding that he did not report the injury on a form approved by OWCP within 30 days following the injury.

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.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

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.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period February 5 through March 10, 2021.

Appellant filed written notice of his traumatic injury (Form CA-1) on March 10, 2021. By decision dated May 11, 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted February 5, 2021 employment injury. It noted that the denial of COP did not preclude appellant from filing a claim for disability due to the effects of the accepted employment injury.

Because appellant filed written notice of his traumatic injury claim (Form CA-1) on March 10, 2021 the Board finds that it was not filed within 30 days of the accepted February 5, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, he is not entitled to COP.

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 his burden of proof to establish entitlement to COP for the period February 5 through March 10, 2021.

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *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).

⁶ 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).

ORDER

IT IS HEREBY ORDERED THAT the May 11, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2022
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