

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

_____	)	
<b>L.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-1041</b>
	)	<b>Issued: December 30, 2022</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>AMERICAN LAKE VA MEDICAL CENTER,</b>	)	
<b>Tacoma, WA, Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANIND CASE**

Before:

ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

On July 1, 2022 appellant filed a timely appeal from a June 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1041.

On June 15, 2022 appellant, then a 32-year-old general health science employee, filed a traumatic injury claim (Form CA-1) alleging that on April 29, 2022 she contracted COVID-19 while in the performance of duty. She noted that she tested positive for COVID-19 on May 4, 2022 and was unsure of the date she initially contracted the infection. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty, but controverted COP because the claim was not filed within 30 days of the injury. She stopped work on May 2, 2022 and returned to work on May 16, 2022.

Appellant submitted a laboratory test result collected by the employing establishment dated May 4, 2022, which revealed that she tested positive for COVID-19.

On May 12, 2022 Maria Flores, a registered nurse, indicated that appellant was medically cleared to return to work on May 13, 2022. She noted that appellant was excused from work from May 2 through 12, 2022.

On June 26, 2022 the employing establishment controverted COP asserting that the injury was not reported on a form approved by OWCP within 30 days of the injury.

By decision dated June 28, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted employment injury. It noted that the denial of COP did not preclude her from filing a claim for compensation (Form CA-7) for disability from work due to the effects of an accepted employment injury.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

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>1</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>3</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>4</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 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>5</sup>

In denying appellant's claim for COP, OWCP failed to consider the date of last exposure as the date of injury in accordance with the guidance in FECA Bulletin No. 21-09. This case will therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim

---

<sup>1</sup> 5 U.S.C. § 8118(a).

<sup>2</sup> *Id.* at § 8122(a)(2).

<sup>3</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>4</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>5</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 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.

for COP.<sup>6</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the June 28, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceeding consistent with this order of the Board.

Issued: December 30, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>6</sup> See e.g., *Order Remanding Case, W.G.*, Docket No. 18-0451 (issued February 21, 2019) (The Board found that OWCP failed to properly develop the medical evidence by requesting the DMA to provide an impairment rating in accordance with the new guidance in FECA Bulletin No. 17-06 for consistently rating upper extremity impairments. The Board remanded the case for further development consistent with OWCP procedures in FECA Bulletin No. 17-06); *Order Remanding Case, H.W.*, Docket No. 10-404 (issued September 28, 2011) (The Board remanded the case to OWCP for selection of another impartial medical specialist in accordance with its procedures).