



treatment. Appellant stopped work on July 13, 2020 and returned on August 18, 2020. On the reverse side of the claim form, appellant's supervisor indicated that her injury was caused by her willful misconduct of failing to follow instructions and not wearing a mask while eating, and not social distancing from other employees.

OWCP received a COVID-19 high-risk determination for the position of nurse within the employing establishment for the period February 1, 2020 through January 21, 2021.

In a development letter dated January 12, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her that her job had been designated as high risk and, therefore, to accept her claim she should submit a copy of the laboratory test indicating that she had COVID-19. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding the controversion of appellant's claim. It afforded both parties 30 days to submit the necessary evidence.

In support of her claim, appellant submitted a positive laboratory test result, dated July 23, 2020, which confirmed that she contracted COVID-19.

Appellant subsequently submitted a statement dated January 19, 2021. She attested that her job required close proximity with patients in a high-risk area and that she contracted COVID-19 while at work. She contended that her supervisor's assertion that she contracted COVID-19 due to her interaction with a co-worker was an unfounded assertion.

By letter dated January 25, 2021, the employing establishment controverted appellant's claim.

In a development letter dated February 17, 2021, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It provided appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted a medical report dated July 21, 2020 from Dr. Guillermo Santos, an osteopathic physician specializing in family medicine. Dr. Santos related that appellant had contact with a laboratory-confirmed COVID-19 patient and her symptoms included a fever and acute respiratory illness, which began a week ago.

OWCP received an x-ray report dated July 23, 2020 from Dr. John Didovic a Board-certified diagnostic radiology specialist, which diagnosed COVID-19 and pneumonia.

In a medical report dated July 30, 2020, Dr. Santos diagnosed COVID-19 and indicated that her x-ray revealed that she also had pneumonia.

On March 11, 2021 appellant submitted a letter wherein she reconfirmed that she worked with patients in the ENT clinic and was frequently exposed to respiratory droplets.

By decision dated March 19, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied her claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted July 13, 2020 employment injury.

On March 25, 2021 appellant requested reconsideration of OWCP's March 19, 2021 decision. She related that she was requesting reconsideration of the denial of COP. Appellant alleged that her supervisor had been notified of her COVID-19 diagnosis on the day of injury, and that she had been unable to submit a form approved by OWCP within 30 days because she was hospitalized and unable to return to work for five weeks after the date of injury.

By decision dated April 29, 2021, OWCP denied modification of its March 19, 2021 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 a 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 medical evidence establishing the COVID-19 diagnosis as the [d]ate of [i]njury 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.

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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, 763-64 (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).

<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.

Appellant filed written notice of her traumatic injury on a Form CA-1 on January 6, 2021, alleging that on July 13, 2020, she contracted COVID-19 while in the performance of duty. She stopped work on July 13, 2020, and returned on August 18, 2020. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was July 13, 2020.<sup>7</sup> As appellant filed her Form CA-1 on January 6, 2021, more than 30 days after the July 13, 2020 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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 29, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2023  
Washington, DC

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

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

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

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