

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

M.P., Appellant)	
)	
and)	Docket No. 22-0597
)	Issued: August 17, 2023
SOCIAL SECURITY ADMINISTRATION,)	
Baltimore, MD, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 4, 2022 appellant filed a timely appeal from a February 14, 2022 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP).

FACTUAL HISTORY

On January 29, 2022 appellant, then a 33-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on December 27, 2021 she contracted COVID-19 from an unknown individual at work while in the performance of duty. On the reverse side of the claim

¹ 5 U.S.C. § 8101 *et seq.*

form, appellant's immediate supervisor noted, "Employee worked full day on 12/27 and called in the next morning that she was at a medical facility getting tested for [COVID-19]."

On January 29, 2022 OWCP received medical evidence that appellant submitted in support of her claim, including a polymerase chain reaction laboratory test result indicating that a sample collected on December 28, 2021 tested positive for the virus that causes COVID-19.

By decision dated February 14, 2022, OWCP denied appellant's claim for COP, finding that she had not reported the December 27, 2021 injury within 30 days of the date of 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.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

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.⁵

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."⁶

² *Id.* at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *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).

⁵ 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).

⁶ 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.

ANALYSIS

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

On January 29, 2022 appellant filed a claim for a December 27, 2021 traumatic injury, alleging that on December 27, 2021 she contracted COVID-19 from an unknown individual at work while in the performance of duty. She stopped work on December 27, 2021. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 27, 2021.⁷ As appellant filed her Form CA-1 on January 29, 2022, more than 30 days after the December 27, 2022 date of injury, the Board finds that appellant 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.

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2023
Washington, DC

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

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

A handwritten signature in black ink, appearing to read "J. D. McGinley". The signature is written in a cursive style with a large, sweeping initial "J".

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