

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

E.H., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
ALVIN C. YORK VA MEDICAL CENTER,)
Murfreesboro, TN, Employer)
_____)

**Docket No. 23-0453
Issued: August 16, 2023**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On February 10, 2023 appellant filed a timely appeal from an August 24, 2022 merit decision and an October 24, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0453 to the appeal.

On August 12, 2022 appellant, then a 67-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she contracted COVID-19 on July 9, 2022 while in the performance of duty. On the reverse side of the claim form, T.M., an employing establishment supervisor, confirmed that appellant's injury occurred while in the performance of duty. Appellant stopped work on July 11, 2022 and returned on July 20, 2022.

In support of her claim, appellant submitted an antigen test result dated July 11, 2022, which revealed that she tested positive for COVID-19.

By decision dated August 24, 2022, OWCP denied appellant's claim for continuation of pay (COP), finding that she had not reported her injury on an OWCP-approved form within 30 days following the injury. It noted that the denial of COP did not affect her entitlement to compensation benefits.

In an appeal request form dated September 22, 2022 and received by OWCP on October 3, 2022, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated October 24, 2022, OWCP denied appellant's request for a review of the written record, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP, along with the submission of new evidence.

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

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.⁴

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."⁵

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

¹ 5 U.S.C. § 8118(a).

² *Id.* at § 8122(a)(2).

³ *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).

⁴ 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).

⁵ FECA Bulletin No. 21-09.II.2 (issued April 29, 2021). On March 11, 2021 the American Rescue Plan Act (ARPA) of 2021 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.

therefore be remanded for application of FECA Bulletin No. 21-09 with regard to appellant's claim for COP.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 24, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.⁷

Issued: August 16, 2023
Washington, DC

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

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

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

⁶ See *Order Remanding Case, L.J.*, Docket No. 22-1041 (issued December 30, 2022); see also *Order Remanding Case, K.C.*, Docket No. 22-1066 (issued December 23, 2022).

⁷ In light of the Board's disposition of the merit issue, the nonmerit issue is rendered moot.