

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

N.S., Appellant	)	
	)	
and	)	<b>Docket No. 23-0459</b>
	)	<b>Issued: August 29, 2023</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>WEST ROXBURY VA MEDICAL CENTER,</b>	)	
<b>West Roxbury, MA, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On February 14, 2023 appellant filed a timely appeal from a November 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0459.

On November 21, 2022 appellant, then a 30-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on October 20, 2022 she contracted COVID-19 due to exposure from patients or coworkers while in the performance of duty. She stopped work on October 21, 2022 and returned on November 1, 2022.

Appellant submitted an antigen test result collected at a laboratory on October 24, 2022, which revealed that she tested positive for COVID-19.

By decision dated November 28, 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 of the accepted employment injury. It noted that the denial of COP did not affect her entitlement to other compensation benefits.

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

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<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 762-64 (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 (released March 31, 2020) and FECA Bulletin No. 21-01 (released October 21, 2020). FECA Bulletin No. 21-09 supersedes FECA Bulletin Nos. 20-05 and 21-01.

<sup>6</sup> *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).

**IT IS HEREBY ORDERED THAT** the November 28, 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.

Issued: August 29, 2023  
Washington, DC

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

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

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