

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

N.F., Appellant)	
)	
and)	Docket No. 23-0460
)	Issued: August 16, 2023
U.S. POSTAL SERVICE, WEST ALLIS POST)	
OFFICE, West Allis, WI, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 14, 2023 appellant filed a timely appeal from a February 1, 2023 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.²

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 1, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On January 18, 2023 appellant, then a 43-year-old mail handler technician, filed a traumatic injury claim (Form CA-1) alleging that on October 14, 2022 she sustained a fractured right ankle when she was walking her mail delivery route while in the performance of duty. Appellant stopped work on October 14, 2022 and returned to work on November 15, 2022.

In a January 19, 2023 letter, the employing establishment controverted appellant's request for receipt of COP as untimely filed.

On January 19, 2023 OWCP received an authorization for examination and/or treatment (Form CA-16), which was signed by an employing establishment official on that date. It also received a report of work status indicating that appellant returned to full-time modified-duty work on November 15, 2022.

In a January 23, 2023 development letter, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded her 30 days to submit the requested evidence. No response was received.

By decision dated February 1, 2023, OWCP denied appellant's request for COP as her claim was not filed within 30 days of the alleged October 14, 2022 date of injury. It advised appellant that the denial of COP did not affect her entitlement to other compensation benefits.

LEGAL PRECEDENT

Section 8118 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 traumatic injury with his or her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

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.⁶

³ *Supra* note 1 at § 8118(a).

⁴ *Id.* at § 8118(a).

⁵ *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).

⁶ 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).

ANALYSIS

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

Appellant filed written notice of her traumatic injury (Form CA-1) on January 18, 2023. By decision dated February 1, 2023, OWCP denied her request for COP as her claim was not filed within 30 days of the alleged October 14, 2022 date of injury. It noted that the denial of COP did not affect her entitlement to other compensation benefits. Because she did not file a written claim within 30 days from the date of injury, the time specified in sections 8118(a) and 8122(a)(2) of FECA,⁷ she is not entitled to COP. When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to COP, notwithstanding prompt notice of injury.⁸

Appellant did not submit written notice of injury on an approved form until January 18, 2023, more than 30 days after the alleged date of injury, when she submitted a Form CA-1. Therefore, the Board finds that she is not entitled to COP.⁹

CONCLUSION

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

⁷ 5 U.S.C. §§ 8118(a), 8122(a)(2).

⁸ See *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *R.J.*, Docket No. 08-2338 (issued June 9, 2009); *Ann M. Yelle*, Docket No. 98-2508 (issued March 9, 2000).

⁹ See *A.G.*, Docket No. 20-0942 (issued February 14, 2022); *Robert E. Kimzey*, 40 ECAB 762 (1989). The case record contains a Form CA-16 signed by an employing establishment official on January 19, 2023. A properly completed Form CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 16, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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