



## **FACTUAL HISTORY**

On January 30, 2023 appellant, then a 61-year-old lead clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she contracted COVID-19 while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim, contending that appellant did not contract COVID-19 at work rather, she was at home when she contracted the condition. Appellant stopped work on December 28, 2022 and returned on January 9, 2023.

By decision dated February 6, 2023, OWCP denied appellant's claim for COP, finding that she had not reported the alleged December 28, 2022 injury on an OWCP-approved form within 30 days of the date of the injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

## **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>3</sup> This latter section provides that written notice of injury shall be given within 30 days.<sup>4</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>5</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>6</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

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<sup>3</sup> *Id.* at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</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>6</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).

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>7</sup>

### ANALYSIS

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

Appellant filed her Form CA-1 on January 30, 2023. She stopped work on December 28, 2022. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was December 28, 2022.<sup>8</sup>

Because appellant filed her Form CA-1 on January 30, 2023, the Board finds that it was not filed within 30 days of the alleged December 28, 2022 employment injury, as specified in section 8118(a) and 8122(a)(2) of FECA. Accordingly, she is not entitled to COP.<sup>9</sup>

On appeal appellant contends that she returned to work on January 9, 2023 and completed and submitted all the necessary paperwork for her claim. She further contended, however, that she had to resubmit the paperwork because employing establishment management misplaced the paperwork and acknowledged its error. The Board is precluded from reviewing evidence which was not of record as of the date of OWCP’s final decision.<sup>10</sup>

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.

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<sup>7</sup> 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.

<sup>8</sup> *Id.*

<sup>9</sup> *See L.J.*, Docket No. 22-1187 (issued January 4, 2023); *H.J.*, Docket No. 22-0772 (issued August 25, 2022); *J.T.*, Docket No. 22-0588 (issued July 20, 2022).

<sup>10</sup> 20 C.F.R. § 501.2(c)(1).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 6, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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