

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

D.R., Appellant)	
)	
and)	Docket No. 25-0066
)	Issued: December 6, 2024
U.S. POSTAL SERVICE, MARCELLUS POST OFFICE, Marcellus, MI, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 28, 2024 appellant, through counsel, filed a timely appeal from an October 1, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

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

FACTUAL HISTORY

This case has previously been before the Board on a different issue.³ The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On December 2, 2020 appellant, then a 64-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 30, 2020 she strained her right knee when she tripped over a package while in the performance of duty. She did not stop work. On the reverse side of the claim form, appellant's supervisor, J.R., reported that the employing establishment first received notice of appellant's injury on November 3, 2020.

A second Form CA-1 signed by the employing establishment on December 8, 2020 indicated that on October 30, 2020 appellant strained her right knee when she tripped over a package while in the performance of duty. On the reverse side of this claim form, M.S., an agency reviewer, indicated that the employing establishment first received notice of appellant's injury on December 8, 2020.

In an undated statement, appellant related that she overextended her knee when she tripped and caught her foot on a panel while carrying mail flats. She indicated that she developed right hip and right leg pain as a result of the alleged incident.

By decision dated February 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish medical conditions causally related to the accepted October 30, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury or medical condition causally related to the accepted employment incident.

On April 8, 2021 appellant requested reconsideration of OWCP's February 25, 2021 decision. No additional evidence was received.

By decision dated July 7, 2021, OWCP denied modification of the February 25, 2021 decision.

Appellant subsequently requested reconsideration.

By decision dated January 27, 2022, OWCP denied modification of the July 7, 2021 decision.

³ Docket No. 22-0471 (issued June 27, 2022).

Appellant, through counsel, appealed to the Board. By decision dated June 27, 2022, the Board set aside the January 27, 2022 decision and remanded the case for further development of the medical evidence.⁴

By decision dated October 6, 2022, OWCP accepted appellant's claim for resolved temporary aggravation of spondylolisthesis lumbar region.

By separate decision also dated October 6, 2022, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted October 30, 2020 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

On October 31, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the COP denial.

Following a preliminary review, by decision dated January 27, 2023, an OWCP hearing representative set aside the October 6, 2022 decision and remanded the case for further development. The hearing representative instructed OWCP to further develop whether appellant had evidence, which would support that the Form CA-1 was initially completed on November 3, 2020. It further requested that the employing establishment address its notation on the December 4, 2020 Form CA-1, that the employing establishment first received notice of appellant's injury on November 3, 2020. The hearing representative indicated that there was a discrepancy between this date and the date on which the Form CA-1 was signed. The case was therefore remanded for OWCP to obtain clarification from the employing establishment as to when appellant first provided written notice of her injury on an OWCP-approved form.

On January 31, 2023 OWCP requested that appellant clarify when either the OWCP-approved claim form or other written notice of her claim was provided to the employing establishment in order to determine her entitlement to COP. It noted that the record revealed two CA-1 forms with conflicting dates as to when the written notice was provided to the employing establishment. OWCP indicated that one Form CA-1 reveals that appellant signed the form on December 2, 2020 and the employing establishment signed on December 4, 2020. However, on the reverse side of the claim form, the employing establishment indicated that it first received notice of appellant's injury on November 3, 2020.

On January 31, 2023 OWCP requested that the employing establishment clarify when appellant provided written notice of her injury on an OWCP-approved form and whether there was another written notice filed by appellant prior to December 2, 2020. It further requested that the employing establishment confirm whether the notation that notice of appellant's injury was first received of November 3, 2020 was an error.

On February 3, 2023 J.C., an employing establishment representative, responded to OWCP's letter, indicating that there was not another Form CA-1 filed prior to December 2, 2020. She indicated that the November 3, 2020 date provided on the Form CA-1 was an error. J.C.

⁴ *Id.*

advised that appellant filed the claim on December 2, 2020; her supervisor completed the reverse side on December 4, 2020; and the employing establishment received it on December 8, 2020.

In an undated statement, appellant indicated that, on the date of injury, her supervisor was not present to report the incident. She noted that she reported the incident on November 2, 2020, and provided a written statement. Appellant further noted that, on November 27, 2020, her supervisor informed her that she misplaced appellant's written statement and her doctor's report, and she requested that appellant write another statement and submit it for consideration.

OWCP provided appellant's response to the employing establishment and requested that they obtain clarification and a written statement from appellant's supervisor addressing appellant's allegations.

In an e-mail response, appellant's supervisor, noted that the accident was first reported on November 2, 2020. Appellant tripped over a package or mail tray, but did not intend to seek medical treatment. However, J.R. noted that, on November 2, 2020, appellant indicated that her condition had not improved, and that she needed to go to the doctor. It was at that time that the accident report was entered.

On March 1, 2023 OWCP again requested that the employing establishment provide the exact date when appellant first submitted a Form CA-1 or a form approved by OWCP and whether it was received within 30 days from the date of injury. It requested that appellant's supervisor provide a copy of the form. OWCP also requested that appellant identify the date she completed the Form CA-1, if she completed the form before December 2, 2020, and to whom she submitted the form. It also requested that she submit the "written statement" purportedly provided to her supervisor on November 2, 2020.

Appellant resubmitted the Form CA-1 signed on December 2, 2020, wherein her supervisor completed the reverse side of the claim form on December 4, 2020. The form indicated that notice of injury was first received on November 3, 2020.

By decision dated March 16, 2023, OWCP denied appellant's claim for COP, finding that she had not reported her injury on an OWCP-approved form within 30 days of the accepted October 30, 2020 employment injury. It further noted that the decision affected only her entitlement to COP and did not affect her entitlement to other compensation benefits.

On March 24, 2023 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on September 11, 2023.

By decision dated November 8, 2023, OWCP's hearing representative affirmed the March 16, 2023 decision.

On September 4, 2024 appellant, through counsel, requested reconsideration. She reiterated that she was entitled to COP.

By decision dated October 1, 2024, OWCP denied modification of the November 8, 2023 decision.

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.⁵ This latter section provides that written notice of injury shall be given within 30 days.⁶ The context of section 8122 makes clear that this means within 30 days of the injury.⁷

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.⁸

ANALYSIS

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

The record reflects that appellant first filed written notice of her traumatic injury on a Form CA-1 on December 2, 2020, alleging that on October 30, 2020 she injured her right knee when she tripped over a package while in the performance of duty. As noted above, to be eligible for COP, a claimant must file a Form CA-1 within 30 days of the date of injury.⁹ As appellant filed her Form CA-1 on December 2, 2020, more than 30 days after the October 30, 2020 date of injury, the Board finds that she is not entitled to COP.¹⁰

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.

⁵ *Id.* at § 8118(a).

⁶ *Id.* at § 8122(a)(2).

⁷ *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).

⁸ 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).

⁹ *Id.*

¹⁰ *A.H.*, Docket No. 23-0171 (issued June 16, 2023).

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 6, 2024
Washington, DC

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

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

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