

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

T.M., Appellant)

and)

DEPARTMENT OF THE ARMY, CIVILIAN)
PERSONNEL ADVISORY CENTER, PRESIDIO)
OF MONTEREY, Employer)
-----)

Docket No. 24-0729
Issued: July 30, 2024

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On June 21, 2024 appellant filed a timely appeal from an April 26, 2024 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.

ISSUE

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

FACTUAL HISTORY

On April 4, 2024 appellant, then a 58-year-old administration and program specialist, filed an occupational disease claim (Form CA-2) alleging that she contracted COVID-19 causally

¹ 5 U.S.C. § 8101 *et seq.*

related to factors of her federal employment. She indicated that she traveled across country on November 2, 2021 to attend a recruitment event. On her November 5, 2021 return flight, appellant felt ill and tested positive for COVID-19. She became aware of her condition and attributed it to her federal employment on November 5, 2021. On the reverse side of the claim form, the employing establishment advised that appellant had first reported her condition to her supervisor on February 1, 2024. She missed work due to COVID-19 from November 8 to 10, 2021 and November 12 through 15, 2021.

Appellant submitted the result of a nucleic acid amplification test dated November 9, 2021, which revealed that she had tested positive for COVID-19.

In a November 23, 2021 note, Dr. Nupur Aggarwal, a Board-certified internist, evaluated appellant for symptoms of COVID-19. She noted that appellant had been diagnosed with COVID-19 on November 5, 2021. Dr. Aggarwal diagnosed a COVID-19 viral infection, cough, subacute sinusitis, and fatigue. She referred appellant for a chest x-ray on that date, which revealed atelectasis *versus* early pneumonia of the left lower lobe.

In a letter dated April 26, 2024, OWCP informed appellant that as she had been diagnosed with COVID-19 between January 27, 2020 and January 27, 2023, she was covered under the American Rescue Plan Act (ARPA).² It indicated that it was converting her occupational disease claim to a traumatic injury claim in accordance with the provisions of the ARPA. OWCP advised appellant that she could file for COP if she had lost work within 45 days of the injury and timely filed an appropriate form.

In separate correspondence dated April 26, 2024, OWCP notified appellant that it had accepted her claim for COVID-19.

By decision dated April 26, 2024, OWCP found that appellant was not entitled to COP as she had not reported her injury on an OWCP-approved form within 30 days. It noted that the denial of COP did not affect her entitlement to other compensation benefits.

LEGAL PRECEDENT

Section 8118(a) of FECA³ 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. 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

² Public Law 117-2 (March 11, 2021).

³ 5 U.S.C. § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ See *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).

OWCP 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 (but if that form is not available, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁶

FECA Bulletin No. 21-09 at subsection II.2 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.”

FECA Bulletin No. 23-02 provides that claims for COVID-19 diagnosed after January 27, 2023 should be filed as an occupational disease claim unless the employee attributes his or her condition to a clear identifiable incident or incidents that occurred over a single day or work shift.

ANALYSIS

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

Appellant initially filed a Form CA-2 for an occupational disease claim alleging that she became ill with COVID-19 on November 5, 2021. However, as she was diagnosed with COVID-19 between January 2020 and January 2023, she was covered under the ARPA.⁷ OWCP thus converted appellant’s occupational disease claim to a traumatic injury claim. It found her date of injury to be the date that she became ill returning from travel, November 5, 2021. In her November 23, 2021 report, Dr. Aggarwal also noted that appellant had been diagnosed with COVID-19 on November 5, 2021. Appellant is thus eligible for COP if she can demonstrate that she filed written notice of her claim on an OWCP-approved form within 30 days of November 5, 2021, the date of injury. As previously noted, FECA Bulletin No. 21-09 defines date of injury as the date of last exposure, which in this case was November 5, 2021. As appellant filed her Form CA-1 on April 4, 2024, more than 30 days after the November 5, 2021 date of injury, the Board finds that she has not met her burden of proof.

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.

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).

⁷ *Supra* note 2.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2024
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