

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

L.F., Appellant	)	
	)	
and	)	<b>Docket No. 24-0272</b>
	)	<b>Issued: May 2, 2024</b>
DEPARTMENT OF VETERANS AFFAIRS,	)	
BILOXI VA MEDICAL CENTER, Biloxi, MS,	)	
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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 25, 2024 appellant filed a timely appeal from a January 24, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the January 24, 2024 decision, appellant submitted additional evidence to OWCP. 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 November 11, 2020 appellant, then a 39-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 2020 he fell to the floor while performing cardiopulmonary resuscitation (CPR) and experienced right shoulder pain while in the performance of duty. OWCP accepted the claim for contusions of the knees, wrists, and chest wall, and thoracic strain.

By decision dated October 2, 2023, OWCP denied appellant's claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of his accepted August 6, 2020 employment injury. It noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of his accepted August 6, 2020 employment injury.

On October 2, 2023 appellant requested reconsideration.

By decision dated October 4, 2023, OWCP denied modification of its October 2, 2023 decision.

On October 4, 2023 appellant requested reconsideration. He contended that his immediate supervisor should have promptly reported his injury.

By decision dated October 12, 2023, OWCP denied modification of its October 4, 2023 decision.

On October 12, 2023 appellant requested reconsideration.

By decision dated October 17, 2023, OWCP denied modification of its October 12, 2023 decision.

On October 18, 2023 appellant requested reconsideration. He contended that he stopped work on August 6, 2020, when he sought treatment at a hospital emergency department, but that this absence had not been coded correctly on his timecard.

OWCP received medical reports, nursing notes, a hospital discharge summary, medical billing forms, and leave forms dated April 13, 2016 through October 6, 2023.

On November 7, 2023 OWCP expanded the acceptance of appellant's claim to include a strain of muscle and tendons of the right rotator cuff.

Thereafter, OWCP received postoperative instructions, physical therapy reports, personnel records, and timekeeping records dated April 12, 2020 through November 19, 2023.

By decision dated November 29, 2023, OWCP denied modification of its October 17, 2023 decision.

On November 29, 2023 appellant requested reconsideration.

In a December 4, 2023 statement, appellant contended that his supervisor failed to timely provide him a Form CA-1.

By decision dated December 4, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On December 4, 2023 appellant again requested reconsideration. He contended that although he promptly reported the August 6, 2020 employment injury, his supervisor failed to provide a Form CA-1 within 30 days.

In a December 5, 2023 statement, appellant further contended that his supervisor failed to follow a union agreement regarding prompt reporting of workplace injuries.

OWCP received medical evidence, personnel documents, and timekeeping records dated April 12, 2020 through January 23, 2024.

By decision dated January 24, 2024, OWCP denied modification of its November 29, 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.<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>

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<sup>3</sup> *Id.* at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</sup> *T.S.*, Docket No. 22-1117 (issued March 30, 2023); *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 J.W.*, Docket No. 23-0685 (issued December 18, 2023); *T.S.*, *id.*; *X.M.*, Docket No. 22-0271 (issued February 28, 2023); *G.L.*, Docket No. 22-0490 (issued August 2, 2022); *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 his burden of proof to establish entitlement to COP.

Appellant filed his Form CA-1 on November 11, 2020. As this was more than 30 days after the accepted August 6, 2020 employment injury, the Board finds that it is untimely, pursuant to sections 8118(a) and 8122(a)(2) of FECA.<sup>7</sup> As such, appellant has not met his burden of proof to establish entitlement to COP.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 24, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 2024  
Washington, DC

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

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

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

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<sup>7</sup> *Supra* notes 3 and 4.