

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

J.A., Appellant)	
)	
and)	Docket No. 24-0277
)	Issued: May 17, 2024
U.S. POSTAL SERVICE, BOSTON POST)	
OFFICE, Boston, MA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 25, 2024 appellant filed a timely appeal from a January 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider 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).

¹ The Board notes that, following the January 11, 2024 decision, OWCP received additional evidence. 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.*

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 5, 2023 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2023 he injured his right knee when descending steps while in the performance of duty. He stopped work on August 8, 2023.

On January 11, 2024 OWCP accepted the claim for tear of the right medial meniscus and right knee effusion.

By decision dated January 11, 2024, 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 8, 2023 employment injury. It noted that the denial of COP did not affect his 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.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 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

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 December 5, 2023, claiming COP. As his claim for COP was filed more than 30 days after the claimed August 8, 2023 employment injury, the Board

³ *Id.* at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *J.W.*, Docket No. 23-0685 (issued December 18, 2023); *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).

⁶ 20 C.F.R. § 10.205(a)(1-3); *see also J.W.*; *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).

finds it untimely, pursuant to sections 8118(a) and 8122(a)(2) of FECA.⁷ 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 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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

⁷ *Supra* notes 3 and 4.