

<sup>2</sup> 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**

On April 22, 2024 appellant, then a 64-year-old assistant professor, filed a traumatic injury claim (Form CA-1) alleging that on February 7, 2024 she sustained a right elbow fracture when she slipped and fell in the parking lot while in the performance of duty. On the reverse side of the claim form, her supervisor signed the form on April 29, 2024 and acknowledged that appellant was injured in the performance of duty. Appellant stopped work on the date of injury and returned to work on April 8, 2024.

By decision dated June 12, 2024, OWCP accepted the claim for right elbow displaced fracture (avulsion fracture) of medial epicondyle of right humerus.

By separate decision dated June 12, 2024, 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 February 7, 2024 injury. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to her accepted employment injury.

On July 9, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on September 25, 2024. Appellant asserted that she had timely filed an Occupational Safety and Health Administration (OSHA) Form 301

Following the hearing, appellant submitted OSHA Form 301 Injury and Illness Incident Report with a filing date of February 14, 2024.

By decision dated October 28, 2024, OWCP's hearing representative affirmed the June 12, 2024 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 (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.<sup>6</sup>

### ANALYSIS

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

The record reflects that appellant filed written notice of her traumatic injury on a Form CA-1 on April 22, 2024, alleging that on February 7, 2024 she sustained a right elbow fracture while in the performance of duty. As previously noted, OWCP's regulations provide that a Form CA-1, must be filed within 30 days of the date of the injury.<sup>7</sup> If that form is not available, using another form would not alone preclude receipt.<sup>8</sup> The record indicates that appellant initially filed her claim *via* an OSHA Form 301. However, the Board has held that an OSHA form is not considered a claim for a period of wage loss as required by 5 U.S.C. § 8118.<sup>9</sup>

There is no provision in FECA for excusing a late filing regarding COP.<sup>10</sup> As appellant filed her Form CA-1 on April 22, 2024, more than 30 days after the February 7, 2024 date of injury, the Board finds that appellant's COP claim was untimely filed.<sup>11</sup> Accordingly, appellant has not met her burden of proof to establish entitlement to COP.

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<sup>3</sup> *Id.* at § 8118(a).

<sup>4</sup> *Id.* at § 8122(a)(2).

<sup>5</sup> *C.B.*, Docket No. 23-1035 (issued June 5, 2024); *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 C.B., id.*; *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).

<sup>7</sup> *Id.*

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

<sup>9</sup> *R.D.*, Docket No. 23-0046 (issued March 28, 2023); *R.J.*, Docket No. 08-2338 (issued June 9, 2009).

<sup>10</sup> *See C.C.*, Docket No. 18-0912 (issued July 11, 2019).

<sup>11</sup> *See D.M.*, Docket No. 23-0108 (issued July 11, 2023).

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 24, 2025  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board