

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY A. MORRIS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Fayetteville, Ark.

*Docket No. 96-1597; Submitted on the Record;
Issued April 7, 1998*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.

On May 12, 1995 appellant, then a 46-year-old maintenance mechanic, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on April 6, 1995 he injured his back while repairing a dryer. He stopped work on May 25, 1995 and returned to full duty on July 17, 1995. On February 6, 1996 the Office of Workers' Compensation Programs accepted the claim for lumbar strain and herniated disc at L5-S1, and by decision that same day, denied continuation of pay because appellant's claim was not filed within 30 days of the date of injury. The Office noted that its decision did not affect appellant's entitlement to other compensation benefits.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of the Act.

Section 8118 of the Act¹ provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."² The latter section provides that written notice of injury shall be given "within 30 days." The context of section 8122 makes clear that this means within 30 days of the injury.³

¹ See 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8118.

³ See *George A. Harrell*, 29 ECAB 338 (1978).

In this case, appellant filed a Form CA-1 on May 12, 1995 which was more than 30 days after the April 6, 1995 injury. The responsibility for filing a claim rests with the injured employee.⁴ Moreover, section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitations provision for filing a claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a)⁵ which sets forth the filing requirements for continuation of pay.⁶ There is, therefore, no provision in the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury. Thus, since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, more than 30 days after the April 6, 1995 injury, his claim for continuation of pay is barred by the applicable time limitation provision. This decision does not affect appellant’s possible entitlement to compensation in the form of medical benefits or wage-loss benefits.

The decision of the Office of Workers’ Compensation Programs dated February 6, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 7, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a); *William E. Ostertag*, 34 ECAB 815 (1983).

⁶ 5 U.S.C. § 8122(d)(3).