

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERTO IFILL and U.S. POSTAL SERVICE,  
POST OFFICE, Merrifield, Va.

*Docket No. 97-279; Submitted on the Record;  
Issued October 20, 1998*

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DECISION and ORDER

Before MICHAEL E. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant's claim for continuation of pay is barred by the time limitation provision of the Federal Employees' Compensation Act;<sup>1</sup> and (2) whether appellant has met his burden of proof in establishing disability after June 12, 1996 that is causally related to his accepted employment injury of thoracic outlet spasms.

On June 12, 1996 appellant, then a 39-year-old distribution clerk, filed a traumatic injury claim, alleging that he sustained weakness in both arms and a burning sensation in this fingers and shoulders on May 3, 1996 due to repeated lifting of boxes from all purpose containers. Appellant stopped work June 12, 1996.

In a memorandum from the employing establishment dated June 13, 1996, appellant's supervisor, Caroline E. Grant, indicated that appellant requested sick leave on May 6, 1996 due to discomfort in his shoulders and that she inquired whether the condition was work related. Appellant indicated that he was not sure and rejected her suggestion that he should fill out an accident report. Ms. Grant reported that the employing establishment health unit provided appellant with occupational and nonoccupational compensation forms on June 12, 1996 and that she provided him with an occupational disease claim form several weeks later after discussion with her supervisor concerning appellant's absenteeism but appellant refused to fill out any of the forms. After a formal discussion with appellant concerning his attendance on June 10, 1996, he requested a traumatic injury form from Ms. Grant on June 12, 1996.

On July 3, 1996 appellant filed a claim for compensation on account of traumatic injury for the period June 12 to 21, 1996. Subsequently, appellant filed three claims for continuing compensation for the periods of June 22 to July 19, 1996, July 20 to August 16, 1996 and August 17 to September 13, 1996.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

By decision dated August 12, 1996, the Office of Workers' Compensation Programs determined that appellant was not entitled to continuation of pay during his absence from work from June 13 to June 21, 1996 on the grounds that the notice of injury was not filed on a Form CA-1 within 30 days. The Office noted that denial of continuation of pay does not affect possible entitlement to other compensation benefits. In a decision dated August 27, 1996, the Office accepted appellant's claim for thoracic outlet spasms and advised appellant that he could file a claim for lost time from work as a result of his injury. By decision dated September 14, 1996, the Office denied appellant's claims for wage loss and for continuing compensation for the periods June 12 to 21, 1996 and June 22 to July 19, 1996, respectively, on the grounds that the evidence of record did not establish that he was disabled from work as a result of his accepted injury. In a decision dated November 14, 1996, the Office denied appellant claims for continuing compensation for the periods July 20 to August 16, 1996 and August 17 to September 19, 1996 on the grounds that the evidence did not establish that appellant was disabled from work.

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 Act 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 supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>2</sup> Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8119 which requires, in pertinent part, that written notice of the injury shall be given to employee's immediate superior within 30 days after the injury.<sup>3</sup>

The Office's implementing regulations state that employees who file a claim for a period of wage loss caused by traumatic injury "shall be entitled under certain circumstances, to have their regular pay continued for a period not to exceed 45 days."<sup>4</sup> The regulations further specify that to receive continuation of pay, an employee must have sustained a traumatic job-related injury and must file a claim for a period of wage loss on an approved form within 30 days of the injury.<sup>5</sup>

In the present case, appellant filed his notice of injury on June 12, 1996, more than 30 days after his injury of May 3, 1996. Although appellant contends that he was not aware of the 30-day time limitation on filing a notice of injury to receive continuation of pay and that he had advised his supervisor, Ms. Grant of the injury when it happened, the record does not support this contention. The statement from Ms. Grant reflects that she advised appellant on more than one occasion that he should file a notice of injury and that appellant also received forms from the

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<sup>2</sup> 5 U.S.C. § 8118(a); *see* 20 C.F.R. § 10.201(a)(3).

<sup>3</sup> 5 U.S.C. § 8122(a)(2); 5 U.S.C. § 8119(a)-(c); *Dodge Osborne*, 44 ECAB 849 (1993).

<sup>4</sup> 20 C.F.R. § 10.200(a).

<sup>5</sup> 20 C.F.R. § 10.200(a)(2)-(3).

employing establishment health unit for this same purpose. There is no evidence, as he suggests, that information on filing was withheld from him. As appellant has not disputed that his notice of injury was filed on June 12, 1996, more than 30 days beyond the statutory deadline, under the Act and applicable regulations, he is not entitled to continuation of pay.

The Board also finds that appellant has not established that disability from work after June 12, 1996 is causally related to his accepted injury of thoracic outlet spasms.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup> The term “disability” as used under the Federal Compensation Act means incapacity because of injury in employment to earn the wages which the employee was receiving at the time of injury.<sup>7</sup> The general test for determining loss of wage-earning capacity is whether an injury-related impairment prevents the employee from performing the kind of work he was doing when injured.<sup>8</sup>

In this case, the evidence of record does not establish that appellant was disabled from work by his accepted condition. The only medical reports which fully address appellant’s accepted condition were by Dr. Frederic Cantor, a neurologist. He diagnosed post-traumatic thoracic outlet syndrome due to appellant’s injury at work on May 3, 1996 which caused numbness and tingling in his arms, neck and shoulders. However, he did not indicate that appellant was totally disabled by this condition or that that this condition prevented from performing his regular duties at work. In a form report dated July 8, 1996, Dr. Cantor indicated that appellant was totally disabled “late May ?” and further indicated that he could not proceed with further evaluation until the claim was approved. In later form reports, Dr. Cantor either indicated that it was “unknown” if appellant would be disabled from his regular work for 90 days or more or left this section blank, and failed to fill in any of the pertinent boxes concerning causal relationship and whether appellant was totally disabled. In a narrative report dated August 30, 1996, Dr. Cantor indicated that appellant continued to have pain, disability and tingling in his arms, neck and shoulder girdles and that he could not prescribe treatment until diagnostic tests were done. Although testing was authorized by the Office on September 12, 1996, Dr. Cantor’s subsequent progress notes and report did not express an opinion on whether appellant was totally disabled from performing his regular job duties. Rather he indicated that appellant would have pain with mild lifting and while lifting his arms when driving. None of the medical evidence submitted establishes that appellant was disabled by his accepted employment injury from performing his regular job duties. The narrative reports are either silent with respect to this issue or fail to provide a complete rationalized opinion. The form report are speculative

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<sup>6</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *See Debra A. Kirk-Littleton*, 41 ECAB 703 (1990).

<sup>8</sup> *See Gary L. Loser*, 38 ECAB 673 (1987).

and do not provide an explanation for the comments made in a response to the questions on the form.<sup>9</sup> As appellant has not submitted any rationalized evidence to establish that he was disabled from performing his regular job duties after June 12, 1996, despite the Office's admonishment that the evidence submitted was not sufficient, he has not met his burden of proof and his claims for wage loss and continuing compensation were properly denied.

The decisions of the Office of Workers' Compensation Programs dated November 14, September 14 and August 12, 1996 are hereby affirmed.

Dated, Washington, D.C.  
October 20, 1998

Michael J. Walsh  
Member

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>9</sup> *Charles A. Massenzo*, 30 ECAB 844 (1978).