

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIRGINIA L. TUCKER and U.S. POSTAL SERVICE,  
POST OFFICE, Baltimore, Md.

*Docket No. 98-303; Submitted on the Record;  
Issued June 21, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified by the Federal Employees' Compensation Act.

The Board finds that the Office improperly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified by the Act.

Section 8118(a) 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 a traumatic injury with 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>1</sup> Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the date of the injury.<sup>3</sup>

In the present case, the Office accepted that appellant sustained bilateral trigger thumbs at work on February 18, 1997. By decision dated August 8, 1997, the Office denied appellant's claim for continuation of pay on the grounds that she did not file a written report with her immediate supervisor within 30 days.

The document in the case record that serves as a claim for continuation of pay is the traumatic injury claim, Form CA-1, which was completed and presented to appellant's

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<sup>1</sup> 5 U.S.C. § 8118(a).

<sup>2</sup> 5 U.S.C. § 8122(a)(2).

<sup>3</sup> *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

immediate supervisor on March 20, 1997.<sup>4</sup> As this claim was filed within 30 days after appellant's February 18, 1997 employment injury, the Office improperly determined that her claim for continuation of pay is barred by statute.<sup>5</sup> Therefore, appellant is entitled to continuation of pay in connection with her February 18, 1997 employment injury.

The decision of the Office of Workers' Compensation Programs dated August 8, 1997 is reversed.

Dated, Washington, D.C.  
June 21, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>4</sup> Appellant's immediate supervisor signed the form on that date.

<sup>5</sup> It should be noted that there were 28 days in February 1997.