

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLGA NOVOTNY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Houston, TX

*Docket No. 99-538; Submitted on the Record;
Issued June 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
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.¹

On March 26, 1998 appellant, then a 42-year-old revenue agent, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, alleging that she strained her lower back on February 3, 1998 when she attempted to retrieve her luggage cart which was stuck at the bottom of an escalator. On the reverse of the form, the employing establishment stated that it received notice of appellant's injury on February 4, 1998.

Appellant submitted medical evidence reporting the history of the injury and noting that she had a lumbar strain. She received ongoing medical treatment from March 31, 1998 until June 26, 1998. The record indicates that appellant missed work from February 10 to 17, 1998. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain.

In an April 22, 1998 decision, the Office found that appellant was not entitled to continuation of pay because she did not file a claim within 30 days of the date of injury. The Office noted that its decision did not affect appellant's entitlement to other compensation benefits.

By letter dated May 20, 1998, appellant submitted a written request for a review of the record. Appellant contends that neither she nor her group manager were aware of the 30-day limitation set forth in section 8122 of the Act. In support of her request, appellant submitted a statement from her supervisor indicating that appellant gave him oral notice of the injury on February 4, 1998 and that neither he nor appellant were aware of the 30-day requirement for claiming continuation of pay.

¹ See 5 U.S.C. §§ 8101-8193.

On August 27, 1998 the hearing representative affirmed the decision of the Office dated April 22, 1998. The hearing representative determined that appellant failed to provide written notice of the injury to a superior within 30 days of the injury as set forth in section 8118 and noted that ignorance of the law is insufficient cause to excuse an untimely filing.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Act.

Section 8118² 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 his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2)³ of this title." 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.⁴

Appellant filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, on March 26, 1998. As this was more than 30 days after the February 3, 1998 injury, the claim for continuation of pay is barred by the applicable time limitation provision.

On appeal, appellant contends that neither she nor her group manager were aware of the 30-day limitation as set forth in section 8122 and that it was appellants' employer's responsibility to counsel her as to the proper procedure for submitting a claim. The Board has held that the responsibility for filing a claim rests with the injured employee.⁵ The Board has also held that a claimant's assertion that she was unsure of her rights amounts to ignorance of the law and is insufficient to toll a limitations period.⁶ The Board has also held that 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)⁷ which sets forth the filing requirements for continuation of pay. 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.⁸ The rationale for this finding is set forth fully in the Board's decision in *William E. Ostertag*.⁹ Thus, since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation,

² 5 U.S.C. § 8118.

³ 5 U.S.C. § 8122(a)(2)

⁴ See *George A. Harrell*, 29 ECAB 338 (1978).

⁵ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁶ See *Robert E. Kimzey*, 40 ECAB 762 (1989).

⁷ 5 U.S.C. § 8118(a).

⁸ 5 U.S.C. § 8122(d)(3); see also *Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

⁹ 33 ECAB 1925 (1982).

more than 30 days after the February 3, 1998 injury, her claim for continuation of pay is barred by the applicable time limitation provision.¹⁰

The decision of the Office of Workers' Compensation Programs dated August 27, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 2, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member

¹⁰ This decision does not affect appellant's entitlement to appropriate compensation for any time missed from work due to her accepted employment injury.