

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN M. YELLE and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 98-2508; Submitted on the Record;
Issued March 9, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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.

On May 19, 1997 appellant, then a 31-year-old data transcriber, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on April 15, 1997 she sustained a right shoulder injury when her chair broke and she fell backwards in the performance of her federal employment.

By decision dated June 13, 1997, the Office accepted appellant's claim for a myofascial injury to the supraspinatus muscle. In a separate letter decision also dated June 13, 1997, the Office indicated that appellant was not entitled to continuation of pay for her absence of work from April 30 through May 19, 1997 because she failed to file her claim within 30 days of the injury.

On June 23, 1997 appellant requested a review of the written record. Appellant stated that her chair broke on April 15, 1997 and that she went to tell her supervisor, but she was not at her desk. Appellant stated that she then told Darlene Godin, "lead of node 24," that her chair broke and was told to get another chair. She stated that she told her "lead" that her back was sore on April 16, 1997. Appellant stated that she gave her supervisor a physician's note on May 5, 1997. She indicated that the supervisor subsequently told her she could go on "none pay status" and that she "do[es] n[o]t know nothing about workmen's comp[ensation]." Appellant stated that her supervisor later told her she would need a doctors note stating that her injury was work related. She further stated that she informed both her supervisor and her lead that she had trigger point injections. Appellant indicated that she filled out her workman's compensation papers on May 19, 1997 when they were given to her by her supervisor. She stated that she felt like the filing of this paperwork was the employing establishment's responsibility and that she was never informed of the proper procedures for completing it.

By decision dated September 4, 1997, the Office hearing representative affirmed the Office's June 13, 1997 decision denying continuation of pay on the basis that appellant failed to file written notice of her traumatic injury within 30 days of its occurrence.

On March 27, 1998 appellant's representative requested reconsideration. Appellant's representative urged that appellant's supervisor erred pursuant to 20 C.F.R. § 10.207 in failing to inform appellant of the proper procedure for filing a timely written notice of injury. In this regard, he noted that appellant's supervisor failed to provide her with a Form CA-1, failed to advise her of her right to elect continuation of pay, failed to instruct her to present evidence of her traumatic injury within 10 working days, and failed to advise her that continuation of pay would be controverted with the basis for the controversion. He stated that the supervisor's failure to carry out these duties caused appellant's late filing.

By decision dated June 30, 1998, the Office reviewed the merits of the case and found that the evidence was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office stated that there was no viable excuse for a claimant failing to file written notice of injury within 30 days of the date of injury, including the reasons proposed by appellant and her representative.

The Board finds that the Office 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.

Section 8118(a) 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 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) of this title." Section 8122(a)(2)² provides that written notice of the injury shall be given "within 30 days."

Appellant filed a Form CA-1, notice of traumatic injury, on May 19, 1997. As this was more than 30 days after the April 15, 1997 injury, the claim for continuation of pay is barred by the applicable time limitation provision. With respect to appellant's contention that her supervisor did not provide appropriate guidance on how to file a claim and caused her to file an untimely claim, the Board has held that the responsibility for timely filing of a claim rests with the injured employee.³ The Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions for filing a claim for compensation because of "exceptional circumstances," is not applicable to section 8118(a) which sets forth the filing requirements for continuation of pay.⁴ The rationale for this finding is set forth fully in the Board's decision in *William E. Ostertag*.⁵ There is, therefore, no provision

¹ 5 U.S.C. § 8118(a).

² 5 U.S.C. § 8122(a)(2).

³ *Catherine Budd*, 33 ECAB 1011, 1014 (1982).

⁴ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

⁵ *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury.⁶ With respect to appellant's suggestion that she provided a supervisor with oral notice of injury within the 30-day period, the Board has held that oral notice to the supervisor is insufficient to satisfy the requirements of 5 U.S.C. § 8118.⁷ 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 15, 1997 injury, her claim for continuation of pay is barred by the applicable time limitation. This decision does not affect appellant's entitlement to compensation in the form of medical benefits or wage-loss benefits.

The decisions of the Office of Workers' Compensation Programs dated June 30, 1998 and September 4, 1997 are affirmed.

Dated, Washington, D.C.
March 9, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Dodge Osborne, supra* note 4 at 855.

⁷ *See Russell P. Chambers, 32 ECAB 550 (1981).*