

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GORDON LAMBDIN and U.S. POSTAL SERVICE,
POST OFFICE, Paoli, IN

*Docket No. 01-826; Submitted on the Record;
Issued December 27, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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 November 17, 2000 appellant, then a 63-year-old letter carrier, filed a traumatic injury claim, alleging that he strained his lower trunk on April 16, 1999 while lifting a tub of mail. The employing establishment stated that it received notice of appellant's injury on April 16, 1999 and offered appellant a compensation form at the time of the injury but appellant refused to complete the form.

Appellant submitted a November 1, 2000 statement from Dr. C.X. McCalla, a family practitioner; copies of two photographs depicting a man placing mail tubs on a metal rack; and a narrative statement. Dr. McCalla indicated that appellant sought treatment on August 10, 1999 for a groin strain sustained at work on April 16, 1999. Dr. McCalla diagnosed a left inguinal herniation. Appellant provided a detailed description of the April 16, 1999 incident and subsequent injury.

In a letter dated December 7, 2000, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence to support his claim and afforded him 30 days within which to do so.

In response, appellant submitted treatment notes dated November 25, 1969 to December 13, 2000 from Dr. McCalla and a narrative statement. The note dated August 10, 1999 indicated that appellant was treated for a left inguinal hernia. Appellant stated that in addition to his employing establishment duties he also operated an automobile repair shop but did not injure himself while repairing automobiles.

¹ See 5 U.S.C. §§ 8101-8193.

Subsequently appellant submitted a January 3, 2001 letter from Dr. McCalla indicating that appellant's left inguinal herniation could have been caused by lifting a tub of mail on April 16, 1999.

In a January 5, 2001 decision, the Office accepted appellant's claim for a left inguinal hernia. However, the Office found that appellant was not entitled to continuation of pay because he did not file a claim within 30 days of the date of injury.

The Board finds that appellant's claim for continuation of pay is time barred.

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 November 17, 2000, which was more than 30 days after the April 16, 1999 injury. Therefore, the claim for continuation of pay is barred by the applicable time limitation provision.

On appeal, appellant contends that his supervisor did not counsel him properly about filing a timely claim. Appellant was not aware that the Form CA-1 had to be filed within 30 days.

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 he was unsure of his rights amounts to ignorance of the law and is insufficient to toll a limitations period.⁶ Further, section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation for filing a claim 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

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).

finding is set forth fully in the Board's decision in *William E. Ostertag*.⁹ Thus, since appellant filed the Form CA-1 more than 30 days after the April 16, 1999 injury, his claim for continuation of pay is barred.¹⁰

The decision of the Office of Workers' Compensation Programs dated January 5, 2001 is hereby affirmed.

Dated, Washington, DC
December 27, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁹ 33 ECAB 1925 (1982).

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