

Appellant, then a 53-year-old transportation security screener, filed a traumatic injury claim on June 27, 2003 alleging on May 5, 2003 he sustained a hernia in the performance of his federal duties. Appellant stated that while picking up a bag, another bag fell against the back of

his leg. He alleged that he jerked to keep from falling causing his injury. Appellant underwent a surgical repair of his hernia on July 3, 2003.

By decision dated July 31, 2003, the Office accepted appellant's claim for right inguinal hernia. The Office stated, "If your injury results in lost time from work, you may be eligible to receive continuation of pay until you recover or return to light duty, up to a maximum of 45-calendar days." In a letter dated August 11, 2003, the Office stated, "A review of your claim indicates that the information on file was inadequate to accept your claim. We apologize for incorrectly accepting your claim at this time.... Your claim will remain as being accepted for the next 30 days. However, in 30 days, your claim will be reviewed once more and a formal decision will be issued based on the information in the file at that time."

The Office issued a decision on September 12, 2003 stating, "The allowance of right inguinal hernia stands as issued in our July 31, 2003 letter." However, the Office determined that appellant was not entitled to continuation of pay due to this injury as he did not provide written notice within 30 days of the traumatic injury. The Office noted that appellant's injury occurred on May 5, 2003 and that the employing establishment did not receive written notice of his claim for injury until June 27, 2003, more than 30 days later.

Appellant requested reconsideration on October 6, 2003 and alleged that at the time of the injury on May 5, 2003 he was taking pain medication and did not realize that he had sustained a hernia until after ceasing this medication on June 10, 2003. Appellant stopped work on June 27, 2003. By decision dated November 7, 2003, the Office affirmed the September 12, 2003 decision, finding that appellant did not meet the time limitation for receiving continuation of pay.¹

LEGAL PRECEDENT

The Federal Employees' Compensation Act,² and the implementing regulation³ provide for payment of continuation of pay in certain situations. Specifically, section 8118(a)⁴ provides for continuation of pay not to exceed 45 pays, 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." Section 8122(a)(2) provides that written notice of injury shall be given in writing within 30 days after the injury.⁵

¹ The Office has not issued a final decision regarding appellant's entitlement to wage-loss compensation for the period July 27 to August 10, 2003. Therefore, the Board will not address this issue for the first time on appeal. 20 C.F.R. § 501.2(c). The only adverse decision before the Board is the denial of appellant's claim for continuation of pay.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. §§ 10.205; 10.220.

⁴ 5 U.S.C. § 8118(a).

⁵ 5 U.S.C. § 8122(a)(2).

ANALYSIS

Appellant filed a traumatic injury claim, the appropriate form to claim continuation of pay, on June 27, 2003 for an injury occurring on May 5, 2003. As this claim was filed more than 30 days after the May 5, 2003 employment injury, appellant's claim for continuation of pay is barred by the time limitation provisions of section 8118(a) of the Act.

Before the Office, appellant contended that written notification on the appropriate claim form was given within 30 days of his actual knowledge of the extent of the injury. The Board notes that there are no provisions for exception to the 30-day filing requirement for continuation of pay for either exceptional circumstances or lack of actual knowledge of the seriousness of the injury. As there is no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury, the Office properly denied appellant's claim for continuation of pay.⁶

CONCLUSION

The Board finds that appellant failed to file his claim for continuation of pay within 30 days from his date of injury. Therefore, appellant is barred from receiving continuation of pay under the Act.

ORDER

IT IS HEREBY ORDERED THAT the November 7 and September 12, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 15, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Loretta R. Celi*, 51 ECAB 560, 562-63 (2000).