

pieces of carpet over a four-foot railing to drop them to the floor below for disposal. His supervisor indicated in a separate statement that appellant provided a physician's note on June 27, 2005. On September 14, 2005 the Office accepted his claim for a herniated lumbar disc. It noted that he was not entitled to continuation of pay because he failed to "report the injury" within 30 days.

By letter dated October 21, 2005, appellant argued that he was entitled to continuation of pay because he submitted a June 17, 2005 note from his physician, Dr. Katz, to his supervisor on June 27, 2005, within 30 days of his June 1, 2005 date of injury. He did not receive information on the process for filing a claim from the employing establishment until July 5, 2005.

By decision dated November 3, 2005, the Office denied continuation of pay on the grounds that appellant failed to "report [his] injury" on an Office claim form within 30 days of the date of injury. The Office advised that its denial of appellant's claim for continuation of pay did not affect his entitlement to other compensation benefits.

Appellant requested reconsideration. He stated that on June 8, 2005 he informed his supervisor by telephone of his injury and informed him in person on June 17, 2005 and provided a note from his physician. Appellant contended that the employing establishment did not provide information to him on the process for filing a claim until July 5, 2005.

By decision dated March 1, 2006, the Office hearing representative denied modification of the November 3, 2005 decision.

Appellant requested reconsideration. He argued that he was unable to file a claim for compensation within 30 days of the June 1, 2005 date of injury because he did not know the exact nature of his injury until the results of the June 27, 2005 magnetic resonance imaging (MRI) scan. Appellant argued that the time for filing a claim does not begin to run until the employee is aware of the causal relationship between his employment and his medical condition, citing the Federal Employees' Compensation Act at section 8122(b).¹ He argued that the 30-day period for filing his claim, therefore, should have begun to run on June 27, 2005 rather than June 1, 2005.

By decision dated June 20, 2006, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

Office regulations provide, in pertinent part, that to be eligible for continuation of pay, an employee must: "(1) Have a 'traumatic injury' ... which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment; (2) File Form CA-1 within 30 days of the date of the injury ...; and (3) Begin losing time from

¹ 5 U.S.C. § 8122(b).

work due to the traumatic injury within 45 days of the injury.”² The Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.³

ANALYSIS -- ISSUE 1

On July 6, 2005 appellant filed a claim for a traumatic injury on June 1, 2005. Because he did not file a claim within 30 days, the time specified in sections 8118(a) and 8122(a)(2) of the Act and in the Office procedure manual, he is not entitled to continuation of pay.

Appellant argues that the June 17, 2005 note from Dr. Katz provided to his supervisor satisfies the statutory requirements of section 8122 of the Act, entitled “Time for making a claim” and section 8119, entitled “Notice of injury or death.”⁴ He contends that his immediate supervisor had sufficient written notice of injury within 30 days of the June 1, 2005 employment injury. The Board notes however, that there is a distinction in the Act between an original claim for compensation for disability or death for a traumatic or occupational injury and a claim for continuation of pay for a traumatic injury.⁵

Section 8122 of the Act provides that original claims for compensation for disability or death must be filed within 3 years after the injury or death unless the immediate supervisor had actual knowledge of the injury or death within 30 days or written notice of death or injury, as specified in section 8119, was given within 30 days. Actual knowledge and written notice of injury under section 8119 thereby serve to satisfy the statutory period for filing an original claim for compensation. This is not an issue in appellant’s case because he filed his claim for compensation approximately 40 days after the injury. The Office accepted the claim as timely and paid compensation. Had appellant waited more than three years to file his claim for compensation, the June 17, 2005 medical note would be relevant to whether his claim was timely filed under section 8122.

Claims that are timely under section 8122 are not necessarily timely under section 8118(a). Section 8118(a) makes continuation of pay contingent on the filing of a claim within 30 days of the injury. When an injured employee makes no claim for a period of wage loss within 30 days, he is not entitled to continuation of pay, notwithstanding prompt notice of injury. The June 17, 2005 medical note from Dr. Katz served to provide notice of injury but is irrelevant to whether appellant is entitled to continuation of pay under section 8118(a).

Appellant stated that he did not receive information on the process for filing a claim until July 5, 2005, more than 30 days after the June 1, 2005 date of injury. In the case of *William E. Ostertag*,⁶ the Board explained that the “exceptional circumstances” provision of section

² 20 C.F.R. § 10.205(a)(1-3); *see also* 5 U.S.C. §§ 8118(a), 8122(a)(2).

³ 5 U.S.C. § 8118(a).

⁴ As noted, appellant indicated that he provided the physician’s note to his supervisor on June 17, 2005. His supervisor indicated that he received the note on June 27, 2005.

⁵ *See Laura L. Harrison*, 52 ECAB 515 (2001).

⁶ 33 ECAB 1925 (1982).

8122(d)(3), which may excuse the untimely filing of an original claim for compensation under section 8122(a) and (b), is not applicable to section 8118(a) which concerns a claim for continuation of pay. Because the Act makes no provision for an exception to the time limitation in section 8118(a), no exceptional or mitigating circumstance, including error by the employing establishment, can entitle a claimant to continuation of pay who has not filed a claim within 30 days of the date of injury.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act⁷ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent evidence not previously considered by the Office.⁸ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁹

ANALYSIS -- ISSUE 2

Appellant argued that he was unable to file a claim for compensation within 30 days of the June 1, 2005 date of injury because he did not know the exact nature of his injury until the results of the June 27, 2005 MRI scan. He argued that the time for filing a claim does not begin to run until the employee is aware of the causal relationship between his employment and his medical condition, citing the Act at section 8122(b). Appellant argued that the 30-day period for filing his claim should have begun no earlier than June 27, 2005 when he obtained the results of the MRI scan and understood the nature of his condition. However, as noted above, section 8122 of the Act is not applicable to the filing requirements for continuation of pay. Therefore, this argument does not constitute a relevant legal argument not previously considered by the Office.

⁷ 5 U.S.C. § 8128(a).

⁸ 20 C.F.R. § 10.606(b)(2).

⁹ 20 C.F.R. § 10.608(b).

Because appellant did not show that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument or submitted relevant and pertinent evidence not previously considered by the Office the Office properly denied his claim.

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for his June 1, 2005 employment injury. The Board further finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated June 20 and March 1, 2006 and November 3, 2005 are affirmed.

Issued: October 16, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board