



dated July 9, 2012, noted that a cage gate fell on top of appellant's foot and ankle. The employing establishment controverted appellant's claim for continuation of pay on the grounds that she did not submit a CA-1 claim form (Report of Traumatic Injury) within 30 days of the July 22, 2011 injury.

Appellant submitted reports from Dr. John V. Foley, a Board-certified family practitioner, from June 21 to September 20, 2011, for right thumb based pain and right ankle pain. She reported a right ankle injury when she was in her late teens while skiing. Dr. Foley diagnosed right thumb basilar joint disease and right ankle swelling of unknown etiology, possibly arthritic based. Also submitted was a July 3, 2012 report from Dr. Rachel Hurlburt, an osteopath, who returned appellant to work.

On August 2, 2012 OWCP advised appellant of the type of factual and medical evidence needed to establish her claim. Appellant submitted an August 25, 2012 letter and noted that on July 22, 2011 a metal cage gate fell onto her right ankle. She indicated that on the date of the accident her postmaster left early but a mail truck driver witnessed the event and made a statement. Appellant sought treatment from Drs. Foley and Hurlburt and was tested for gout. She indicated that perhaps her doctors did not understand the injury she was reporting so no additional treatment for her ankle was rendered. Appellant was treated in February 2012 and an x-ray revealed a fractured ankle and Dr. Foley advised that she would need right ankle surgery. In an August 25, 2012 OWCP questionnaire, appellant indicated that she waited almost a full year before filing a claim because she did not know what was wrong until she remembered that in August 2011 a gate fell on her right ankle at work. OWCP advised that in claim number xxxxxx818 she was treated for right ankle swelling and degenerative joint disease but did not mention a July 22, 2011 injury. Appellant indicated that she had forgotten what happened to her right ankle until August 2011 when the pain was all consuming and she could not think straight. She reported that immediately after the injury she experienced swelling, bruising, pain and she sought treatment from her doctor.

In a decision dated September 27, 2012, OWCP denied appellant's claim for compensation on the grounds that the medical evidence did not demonstrate that the claimed medical condition was causally related to the established work-related events.

On December 11, 2012 appellant requested reconsideration. In a December 11, 2012 statement, she indicated that the accident in which she broke her ankle occurred 10 days after her claim of July 22, 2011. Appellant noted that she should have filed a new claim for the fractured ankle but x-rays revealing the fracture were not taken until February 2012. She advised that she filed her claim late because she was unaware that her ankle was broken. In a November 8, 2012 statement, appellant indicated that she underwent surgery on October 1, 2012 on her right ankle and had been off work since that time and used all her sick and annual leave. She submitted a July 3, 2012 report from Dr. Hurlburt who treated her for an ankle fracture related to a workers' compensation case. Also submitted was an October 9, 2012 report from Dr. Foley who treated her for a left ankle medial malleolar nonunion secondary to a fracture. Dr. Foley opined that this injury was an acute traumatic injury occurring in the industrial environment.

By decision dated March 5, 2013, OWCP vacated the decision dated September 27, 2012, finding that the evidence established the causal relationship between the nonunion fracture of the left medial malleolar to the work incident. In a decision dated March 5, 2013, it accepted appellant's claim for nonunion of the medial malleolar of the left ankle.

In a separate March 5, 2013 decision, OWCP denied appellant's claim for continuation of pay on the grounds that she failed to submit a written claim within 30 days of her July 22, 2011 employment injury.

### **LEGAL PRECEDENT**

Section 8118(a) of FECA authorizes continuation of pay, not to exceed 45 days, of an employee "who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>2</sup> 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.<sup>3</sup>

OWCP 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) [f]ile Form CA-1 within 30 days of the date of the injury; and (3) [b]egin losing time from work due to the traumatic injury within 45 days of the injury."<sup>4</sup> FECA authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.<sup>5</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>6</sup> which allows OWCP to excuse failure to comply with the time limitation provision 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. Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.<sup>7</sup>

### **ANALYSIS**

On July 3, 2012 appellant filed a claim for a July 22, 2011 traumatic injury. Because she did not file a claim within 30 days, the time specified in sections 8118(a) and 8122(a)(2) of FECA, she is not entitled to continuation of pay.

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<sup>2</sup> 5 U.S.C. § 8118(a).

<sup>3</sup> *George A. Harrell*, 29 ECAB 338 (1978); *J.J.*, Docket No. 12-1045 (issued October 9, 2012).

<sup>4</sup> 20 C.F.R. § 10.205(a)(1-3).

<sup>5</sup> 5 U.S.C. § 8118(a).

<sup>6</sup> *Id.* at § 8122(d)(3).

<sup>7</sup> *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

OWCP accepted the claim as timely and paid compensation. 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 written claim within 30 days of the injury. When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.<sup>8</sup> The record shows that appellant provided written notice of injury on July 3, 2012, outside the 30-day limitation set forth in the statute.

Appellant noted that on July 22, 2011, the date of the accident, her postmaster left early but a mail truck driver witnessed the event and made a statement. She sought treatment; however, her physicians did not do anything about her right ankle until February 2012 when an x-ray revealed a fractured ankle requiring surgery. Appellant indicated that she waited almost a full year before filing a claim for her ankle injury because she did not realize what occurred until she remembered that in August 2011 a gate fell on her right ankle at work. OWCP advised that in claim number xxxxxx818 she was treated for right ankle swelling and degenerative joint disease but did not mention a July 22, 2011 injury. Appellant indicated that she had forgotten what happened to her right ankle until August 2011 when the pain was all consuming and she could not think straight. In the case of *William E. Ostertag*,<sup>9</sup> the Board explained that the exceptional circumstances provision of section 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 FECA 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 written claim within 30 days of the date of injury.<sup>10</sup> The Board notes that appellant submitted many medical records in support of her claim but these documents are not accepted by OWCP as one of the approved forms for filing written notice of a claim for wage loss due to a traumatic injury.<sup>11</sup> It is the claimant's burden to provide written notice of injury and reports from her physicians are not completed or signed by the claimant. Appellant did not submit written notice of injury on an approved form until July 3, 2012, more than 30 days after the July 22, 2011 employment injury. Therefore, appellant is not entitled to continuation of pay.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

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<sup>8</sup> *W.W.*, 59 ECAB 533 (2008).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *Laura L. Harrison*, 52 ECAB 515 (2002).

<sup>11</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5(b) (June 2012) which lists the approved forms as CA-1, CA-2, CA-2a and CA-7, forms that contain words of claim.

**CONCLUSION**

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 FECA.<sup>12</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 5, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> With her request for an appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).