



a door, landing on her thumb and knee. The employing establishment controverted COP, stating that appellant did not report the injury on a Form CA-1 within 30 days of the incident.

In a September 10, 2013 decision, OWCP accepted appellant's claim for traumatic injury for a right metacarpophalangeal sprain of her thumb and a right medial collateral ligament sprain of her knee. In a decision of the same date, it found that she was not entitled to COP from June 14 through July 29, 2013. OWCP found that appellant did not report her June 13, 2013 traumatic injury on a form approved by it within 30 days. It explained that the decision concerned only COP and did not affect her entitlement to other monetary benefits. OWCP stated, "You may claim compensation for wage loss resulting from this decision by filing Form CA-7."

On appeal, appellant contends that she was physically unable to come into work to file a Form CA-1 in a timely manner, and that at least four people knew directly or indirectly about the June 13, 2013 incident, but failed to file a Form CA-1 on her behalf.

### **LEGAL PRECEDENT**

Section 8118(a) of FECA authorizes COP, 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>

The Board has held that section 8122(d)(3) of FECA,<sup>4</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 COP. 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>5</sup>

### **ANALYSIS**

For employees who sustain a traumatic injury, FECA provides that the employing establishment must continue the employee's regular pay during any period of resulting disability, up to a maximum of 45-calendar days. This is called COP. The employing establishment, not OWCP, pays COP.<sup>6</sup>

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *George A. Harrell*, 29 ECAB 338, 340 (1978).

<sup>4</sup> 5 U.S.C. § 8122(d)(3).

<sup>5</sup> *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

<sup>6</sup> 20 C.F.R. § 10.200(a).

One purpose of COP is to eliminate an interruption to the injured employee's salary due to delay between the notice of injury and payment of compensation benefits.<sup>7</sup> The late filing of a claim for a period of wage loss defeats that purpose.

Appellant's employment injury occurred on June 13, 2013. She did not file a written claim for a period of wage loss due to the traumatic injury within 30 days. Appellant's claim was not filed until July 22, 2013. As there is no provision in FECA for excusing a late filing, she is not entitled to COP. This is so regardless of any failure or alleged failure on the part of the employing establishment<sup>8</sup> or local FECA representative.

Appellant contends that she was physically unable to file her claim in a timely manner and that at least four people knew directly or indirectly of her injury. As OWCP noted in its September 10, 2013 decision, the denial of COP does not affect her entitlement to other monetary compensation benefits. Appellant may pursue a claim for wage loss, as distinguished from COP, for any disability or period of wage loss caused by the accepted employment injury with the submission of a Form CA-7.

### **CONCLUSION**

The Board finds that appellant is not entitled to COP.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claim, *Continuation of Pay and Initial Claims for Compensation*, Chapter 2.807.2 (June 2012).

<sup>8</sup> See 20 C.F.R. §§ 10.210-211 (detailing the employee's and employer's responsibilities in COP cases).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 10, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 3, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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