

By decision dated April 12, 2007, the Office found that appellant was not entitled to continuation of pay, as his notice of traumatic injury was not timely filed within the 30-day period following the employment injury.

On May 16, 2007 appellant requested reconsideration. He submitted a February 6, 2007 statement from Sharon Burleson.

By decision dated June 13, 2007, the Office denied modification of the April 12, 2007 decision.

LEGAL PRECEDENT

Section 8118 of the Federal Employees' Compensation Act¹ authorizes the continuation of pay of 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) of this title."² The context of section 8122 makes clear that this means within 30 days of the date of the injury.³

The Board has held that the responsibility for filing a claim rests with the injured employee.⁴ The Board has also held that section 8122(d)(3) of the Act, which allows the Office 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),⁵ which sets forth the filing requirements for continuation of pay.⁶ There is 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.⁷

ANALYSIS

In this case, appellant's traumatic injury occurred on November 28, 2006; however, he did not file a claim until January 3, 2007, more than 30 days later. As noted, section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions for filing a claim for compensation because of "exceptional circumstances," is not applicable to

¹ 5 U.S.C. §§ 8101 *et seq.*

² *Id.* at 5 U.S.C. § 8122(a)(2).

³ *E.g., Myra Lenburg*, 36 ECAB 487 (1985). *See* 20 C.F.R. § 10.201(a)(3); *George A. Harrell*, 29 ECAB 338 (1978).

⁴ *See Catherine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a).

⁶ 5 U.S.C. § 8122(d)(3); *see also Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

⁷ *Id.*

section 8118(a), which sets forth the filing requirements for continuation of pay.⁸ 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 date of injury.

The Board notes that, although appellant is barred from receiving continuation of pay, he is entitled to compensation benefits under the Act. The Office accepted appellant's claim on April 12, 2007 and explained that the decision denying his continuation of pay did not affect his entitlement to compensation benefits. Appellant may still claim wage-loss compensation by filing a claim. Accordingly, the Office's April 12 and June 13, 2007 decisions are affirmed.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay because he failed to give written notice of his injury within the time specified by the Act.

ORDER

IT IS HEREBY ORDERED THAT the June 13 and April 12, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 3, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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

⁸ See *Dodge Osborne*, 44 ECAB 849 (1993); see *Teresa Samilton*, 40 ECAB 955 (1989); see *William E. Ostertag*, 33 ECAB 1925 (1982).