

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS R. TAYLOR and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, Tex.

*Docket No. 97-1138; Submitted on the Record;
Issued December 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act¹

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined, in its November 1, 1996 decision, that appellant was not entitled to continuation of pay as she did not file her claim for a traumatic injury within 30 days of the injury.

On May 23, 1996 appellant, an equipment cleaner and painter, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay, alleging that on February 7, 1996, her shoe got caught in a railing and she tripped and fell on the concrete floor causing a bulging disc in her back. In a decision dated November 1, 1996, the Office accepted appellant's claim for L5-S1 radiculitis. In another decision also dated November 1, 1996, the Office determined that appellant was not entitled to continuation of pay benefits on the grounds that her notice of traumatic injury was not timely filed. Appellant stated that she was not aware of the requirement to file written notice within 30 days and was not advised by management of the procedure to follow in filing a claim due to an on-the-job injury. She went on to say that she reported the incident to her work leader the morning it happened and later to her supervisor. The employment establishment is of the opinion that it was at fault and that appellant should be awarded continuation of pay. By letter dated November 18, 1996, appellant requested reconsideration of the Office's decision denying continuation of pay. No evidence was submitted with the request. By decision dated November 29, 1996, after a merit review, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the request was insufficient to warrant modification of the prior decision.

¹ See 5 U.S.C. §§ 8101-8193.

The Board notes that section 8118 of the Act² provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2)³ of this title.” 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.⁴ While a specific form is not required for filing of written notice, it is necessary that a filing contain words which could be so construed.

The Board has held that the responsibility for filing a claim rests with the injured employee.⁵ Further, the Board has 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)⁶ which sets forth the filing requirements for continuation of pay.⁷ There is, therefore, 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.⁸ Thus, since appellant filed the Form CA-1 more than 30 days after the February 7, 1996 employment-related injury, her claim for continuation of pay is barred by the applicable time limitation provision.

² 5 U.S.C. § 8118.

³ 5 U.S.C. § 8122(a)(2).

⁴ See *George A. Harrell*, 29 ECAB 338 (1978).

⁵ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁶ 5 U.S.C. § 8118(a).

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

⁸ *William E. Ostertag*, 33 ECAB (1925).

The decisions of the Office of Workers' Compensation Programs dated November 29 and November 1, 1996 denying continuation of pay are affirmed.

Dated, Washington, D.C.
December 9, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member