

establishment controverted the claim for continuation of pay due to “late reporting of claim.” The Office received the claim on June 23, 2005.

Appellant submitted a June 10, 2005 report from Dr. Joel I. Sarachek, a Board-certified family practitioner, who treated appellant for back pain following a motor vehicle accident. Dr. Sarachek advised appellant that he could return to work on May 23, 2005.

By letter dated July 5, 2005, the Office advised appellant that additional factual and medical evidence was needed. Appellant was specifically requested to explain why written notice of his injury was not reported to his supervisor within 30 days. The Office allotted appellant 30 days within which to submit the requested information.

In a report dated July 21, 2005, Dr. Sarachek advised that appellant was in a work-related automobile accident on May 6, 2005 and diagnosed muscle spasm. He noted that, previously on July 9, 2004, appellant was riding his bike and was struck by a car. Dr. Sarachek indicated that appellant experienced spasms of his back muscles, but that all his symptoms had resolved. He indicated that appellant had returned to normal, with no pain, stiffness or limitation related to the accident on May 6, 2005.

By decision dated August 8, 2005, the Office determined that appellant was not entitled to continuation of pay during his absence from work because the injury was not reported on a form approved by the Office within 30 days following the injury.¹

LEGAL PRECEDENT

Section 8118² of the Federal Employees’ Compensation Act³ provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim for a period of wage loss due to traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.” Section 8122(a)(2)⁴ provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.⁵

Section 20 C.F.R. § 10.205 provides in pertinent part that to be eligible for continuation of pay, a person must: “(1) [h]ave 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;

¹ The Office subsequently accepted that the May 6, 2005 incident caused back muscle spasms.

² 5 U.S.C. § 8118.

³ 5 U.S.C. §§ 8101-8193.

⁴ 5 U.S.C. § 8122(a)(2).

⁵ 5 U.S.C. § 8119(a), (c); see *Gwen Cohen-Wise*, 54 ECAB 732 (2003).

(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.”⁶

ANALYSIS

Appellant’s notice of traumatic injury, Form CA-1, was signed by appellant’s supervisor on June 16, 2005, and received no earlier than June 10, 2005. This is more than 30 days after the May 6, 2005 employment injury. The statutory requirement for establishing entitlement to continuation of pay is that the notice of injury must be provided on the appropriate form within 30 days of the date of injury. Appellant’s filing of the CA-1 form is not timely regarding his entitlement to continuation of pay.

The record does not contain any evidence showing that appellant gave the requisite notice to the employing establishment within 30 days of the injury.⁷ On July 5, 2005 the Office requested that appellant address why he did not file a claim within 30 days. Appellant did not respond or otherwise offer any evidence or argument supporting that he provided written notice of injury within 30 days of his employment injury.

On appeal, appellant asserts that he submitted all forms in a timely manner and that he assumed that any necessary information would be requested of him. However, as noted, the evidence does not support that appellant filed written notice of injury within 30 days of May 6, 2005. The Board has held that the responsibility for filing a claim rests with the injured employee.⁸ The Board has also held that a claimant’s assertion that he was unsure of his rights amounts to ignorance of the law and is insufficient to toll a limitation period.⁹ Further, section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation for filing a claim because of “exceptional circumstances,” is not applicable to section 8118(a),¹⁰ which sets forth the filing requirements for continuation of pay.¹¹ Since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, more than 30 days after the May 6, 2005 injury, his claim for continuation of pay is barred by the applicable time limitation provision.¹²

⁶ 20 C.F.R. § 10.205(a)(1)-(3).

⁷ See *Laura L. Harrison*, 52 ECAB 515 (2001).

⁸ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁹ See *Robert E. Kimzey*, 40 ECAB 762 (1989).

¹⁰ 5 U.S.C. § 8122(d)(3).

¹¹ See *Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

¹² This decision applies only to appellant’s entitlement to continuation of pay. It does not affect appellant’s entitlement to appropriate compensation for any time missed from work due to his accepted employment injury.

CONCLUSION

The Board finds that appellant has not established that he is entitled to continuation of pay for any lost time from work due to the May 6, 2005 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 8, 2005 is affirmed.

Issued: February 13, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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