

In a January 3, 2007 letter, the employing establishment controverted appellant's claim for continuation of pay on the grounds that he failed to submit a CA-1 claim form (Report of Traumatic Injury) within 30 days as required.

By decision dated January 24, 2007, the Office denied appellant's claim for continuation of pay on the grounds that he failed to submit a written claim within 30 days of his October 31, 2006 employment injury.

Appellant requested a hearing which was held on July 11, 2007.

By letter dated July 16, 2007, appellant stated that he received treatment for his left leg fracture first in Iraq and then in Germany. He was flown home on November 17, 2006. On November 20, 2006 he telephoned his home station supervisor, Mike Miller, at the Rock Island Arsenal in Illinois and asked what he needed to do to file a compensation claim. Mr. Miller indicated that he follow appellant's suggestion to send a compensation package to his daughter, Kylee Thompson, who worked for a private company at the arsenal. However, she did not receive the compensation information from Mr. Miller because he sent it to the wrong individual. Appellant provided copies of e-mails showing that Mr. Miller mistakenly sent a CA-1 form and other compensation claim information to a Jillian Bernier on November 21, 2006. In an e-mail to Ms. Bernier dated December 13, 2006, Mr. Miller stated that she should have appellant, "her father," complete the CA-1 form and return it by the following day so that continuation of pay could be approved. Ms. Bernier sent an e-mail to Ms. Thompson on December 13, 2006 stating that she sent the compensation package to Iraq but then realized that it was meant for Ms. Thompson.

On August 1, 2007 the employing establishment stated that appellant was informed prior to going to Iraq that, if he was injured while deployed, he should contact his home station supervisor immediately and also secure copies of all medical records. His home station supervisor would assist in completing the forms. Appellant was informed that claims needed to be timely filed in order to protect certain rights. He was advised that, if his supervisor was not available, he should contact the home station employee benefits office. The employing establishment attempted to contact appellant in mid-November upon his return to the United States, but had no response to its telephone messages, nor did he contact the employing establishment until mid-December.

On August 11, 2007 appellant contended that he was never advised before he left for Iraq of the procedures to follow if he was injured. He stated that, while in Germany, he and a caseworker, Ms. Daniels, tried to contact the employing establishment home station between November 13 and 17, 2006 to report his injury. Appellant reached only recorded messages. He left telephone messages which were not returned. On Friday, November 17, 2006 appellant flew home, having been unable to reach his supervisor while in Germany. On Monday, November 20, 2006 he telephoned Mr. Miller, who forwarded a compensation claim package to the wrong individual. Appellant stated that he never received any telephone calls from the employing establishment at his home and was unaware that the compensation claim information from Mr. Miller was not sent to his daughter until after the 30-day continuation of pay deadline had passed.

By decision dated September 21, 2007, an Office hearing representative upheld the denial of continuation of pay for appellant's October 31, 2006 employment injury.¹

LEGAL PRECEDENT

Office 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) File Form CA-1 within 30 days of the date of the injury ...; and (3) Begin losing time from work due to the traumatic injury within 45 days of the injury."² The Federal Employees' Compensation Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.³

ANALYSIS

On December 26, 2006 appellant filed a claim for an October 31, 2006 traumatic injury. Because he did not file a claim within 30 days, the time specified in sections 8118(a) and 8122(a)(2) of the Act,⁴ he is not entitled to continuation of pay.

Section 8122 of the Act provides that original claims for compensation for disability or death must be filed within 3 years after the injury or death unless the immediate supervisor had actual knowledge of the injury or death within 30 days or written notice of death or injury, as specified in section 8119, was given within 30 days. Actual knowledge and written notice of injury under section 8119 thereby serve to satisfy the statutory period for filing an original claim for compensation. The Office 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 is not entitled to continuation of pay, notwithstanding prompt notice of injury. The record shows that appellant provided notice of injury to his supervisor by telephone on November 20, 2006 but this oral notice is irrelevant to whether appellant is entitled to continuation of pay under section 8118(a).

Appellant argues that he did not receive information on the process for filing a claim until the end of December 2006, more than 30 days after the October 31, 2006 date of injury. In the case of *William E. Ostertag*,⁵ the Board explained that the "exceptional circumstances" provision

¹ Subsequent to the September 21, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² 20 C.F.R. § 10.205(a)(1-3).

³ 5 U.S.C. § 8118(a).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ 33 ECAB 1925 (1982).

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 the Act 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.⁶

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for his October 31, 2006 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 21, 2007 is affirmed.

Issued: May 22, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁶ *Laura L. Harrison*, 52 ECAB 515 (2002).