

The issues are: (1) whether appellant is entitled to continuation of pay for her June 19, 2006 employment injury for the period June 19 through August 3, 2006 on the grounds that she did not give written notice of injury within the time specified under the Federal Employees' Compensation Act; and (2) whether the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On July 28, 2006 appellant, then a 51-year-old letter carrier, filed a traumatic injury claim for continuation of pay/compensation (Form CA-1) alleging that on June 19, 2006 she experienced heat exhaustion/stroke which caused confusion and short-term memory loss, vomiting, overheating and dehydration as a result of carrying mail outside in hot weather.

Appellant submitted an August 1, 2006 narrative statement of a coworker whose signature is illegible. The coworker reported that on June 19, 2006 she was sitting in her long-life vehicle with her shoes off. Appellant asked the coworker whether she had carried her route and the coworker stated that she did not know how appellant returned to the employing establishment. Appellant was taken to a medical center by ambulance. After her arrival, appellant repeated her previous questions and asked additional ones including, how she arrived at the hospital. She submitted employment records and medical records. The medical records of Dr. Aubrey Remmers, a Board-certified family practitioner, stated that appellant was hospitalized on June 19, 2006 for heat exhaustion, amnesia and confusion. Dr. Remmers opined that appellant could return to full work on July 21, 2006.

In an August 1, 2006 letter, the employing establishment controverted appellant's claim for continuation of pay on the grounds that she failed to submit a CA-1 claim form within 30 days as required. It stated that she was released to return to work on July 21, 2006 with regular breaks and rehydration to prevent further episodes but she did not return to work until July 22, 2006 and worked 7.33 hours. The employing establishment stated that appellant took a trip to Florida during her period of total disability and submitted a CA-1 claim form over 30 days after the June 19, 2006 incident. It contended that the medical evidence did not establish that she was totally disabled due to the alleged conditions or explain how she could take a vacation to Florida, a hot and humid region, during her period of total disability.

By letter dated September 8, 2006, the Office accepted the claim for heat and sun stroke, but, in a separate decision, denied appellant's claim for continuation of pay for the period June 19 to August 3, 2006. It found that she failed to submit a written claim within 30 days of the June 19, 2006 employment injury. The Office stated that the decision only concerned entitlement to continuation of pay and did not affect appellant's entitlement to other compensation benefits. It stated that she may claim compensation for wage loss resulting from its decision by filing a Form CA-7 through the employing establishment.

By letter dated March 25, 2007, appellant requested reconsideration. She stated that she did not file a CA-1 claim form within 30 days because she was mentally incapacitated due to her heat stroke and hospitalization for two days. Appellant related that Tom Sorenson was at the hospital with her and she did not remember to complete the claim form. She claimed that she was advised by her husband, Beth Schnellbacher, a union president and Linda Anderson, a coworker, who were at the hospital that Mr. Sorenson stated that he would take care of everything which she assumed meant the paperwork. Appellant stated that on June 23, 2006 she asked Mr. Sorenson about the necessary paperwork she needed to fill out and he responded that she should wait until a determination had been made about what happened to her. She stated that Mr. Sorenson reiterated this statement to her husband when he went to the employing establishment on June 23, 2006 to obtain a return to work form for her. Appellant stated that,

due to her prior work injuries, she was aware that a CA-1 claim form needed to be completed but she was following a direct order from Mr. Sorenson to wait. She trusted him and stated that all along he was setting her up to have her continuation of pay denied. Appellant contended that Mr. Sorenson was notorious for holding personal grudges and vendettas against employees for any reason. She stated that he knew about the 30-day time period for filling out a CA-1 claim form and although he completed the form, he failed to do so within the allotted time period to get back at her for the prior work injuries she had sustained. Appellant noted that Mr. Sorenson's behavior caused at least one coworker to commit suicide. She spoke to Postmaster Tim Cottrell in the presence of supervisors, Juanita Walker and John Brice, and Ms. Schnellbacher about Mr. Sorenson's hateful treatment of employees. Postmaster Cottrell refused to listen to appellant and instructed her to stop bashing Mr. Sorenson. In an undated statement, appellant related that she filed a claim with the Equal Employment Opportunity Commission against Mr. Sorenson and Postmaster Cottrell due to their actions. She submitted statements from her coworkers regarding Mr. Sorenson's verbal abuse towards them and other coworkers.

In a May 3, 2007 letter, the employing establishment stated that the instant claim was not the first one filed by appellant and, thus, she was well aware of the 30-day time limit for completing a CA-1 claim form for entitlement to continuation of pay. It stated that her supervisor was not responsible for completing the form for her. The employing establishment contended that a family member or friend could have completed the form for appellant in a timely manner. The employing establishment stated that the alleged treatment by appellant's supervisor towards her or her coworkers should have no bearing on the relevant issue in the case.

By decision dated June 14, 2007, the Office denied modification of the September 8, 2006 decision, finding her claim for continuation of pay untimely.

In a November 12, 2007 letter, appellant requested reconsideration. She stated that, while she was in the hospital, Mr. Sorenson told her, her husband, Ms. Schnellbacher and Ms. Anderson not to worry about completing a CA-1 claim form because he knew what had occurred and that he would take care of the paperwork. Appellant further stated that he refused to give her husband a CA-1 claim form for the same reasons stated above. She alleged that Mr. Sorenson had been unfair and vindictive towards employees for years. Appellant contended that he lied about completing the paperwork and refused to give her husband a claim form in retaliation for having a chronic illness which caused her to miss work and sustaining several work-related injuries. She noted Postmaster Cottrell's refusal to listen to her complaints about Mr. Sorenson. Appellant submitted statements from her coworkers which indicated that Mr. Sorenson promptly completed the necessary claim forms for their work injuries. An undated statement from her husband related that Mr. Sorenson told him not to worry about anything and that he would take care of the completion of any necessary paperwork. Appellant's husband stated that he advised waiting for a determination as to what happened to appellant before filling out any paperwork. He related that one week later Mr. Sorenson advised him that no paperwork needed to be filled out at that time because he was aware of what happened on the date of injury. Mr. Sorenson again advised him to wait for a determination about what happened to appellant. Appellant submitted a statement signed by her coworkers who witnessed Mr. Sorenson's alleged unprofessional and vindictive behavior at work.

By decision dated January 14, 2008, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was immaterial in nature and, thus, insufficient to warrant a merit review of its prior decisions.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8118 of the Act<sup>1</sup> provides for continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of the Act.<sup>2</sup> Section 8122 provides that written notice shall be given in writing within 30 days after the injury.<sup>3</sup>

Section 10.210(a) of the implementing federal regulation provides in pertinent part:

“An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for continuation of pay. The employee must: (a) [c]omplete and submit Form CA-1 to the employing [establishment] as soon as possible, but no later than 30 days from the date the traumatic injury occurred.”<sup>4</sup>

Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.<sup>5</sup>

The Board has held that the responsibility for filing a claim rests with the injured employee.<sup>6</sup> The Board has also held that section 8122(d)(3) of the Act,<sup>7</sup> 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),<sup>8</sup> which sets forth the filing requirements for continuation of pay.<sup>9</sup> There is no provision in the Act for excusing an

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Id.* at 5 U.S.C. § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</sup> 20 C.F.R. § 10.210(a).

<sup>5</sup> *Laura L. Harrison*, 52 ECAB 515 (2001); *Sylvia P. Blackwell*, 35 ECAB 811 (1984).

<sup>6</sup> *See Catherine Budd*, 33 ECAB 1011 (1982) (continuation of pay denied where employee did not timely file her claim because the employing establishment erroneously told her that her medical records and accident report were sufficient).

<sup>7</sup> 5 U.S.C. § 8122(d)(3).

<sup>8</sup> *Id.* at § 8118(a).

<sup>9</sup> *Id.* at § 8122(d)(3).

employee's failure to file a claim for continuation of pay within 30 days of the employment injury.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

On June 19, 2006 appellant sustained an accepted traumatic injury; however, she did not file a claim until July 28, 2006, more than 30 days later. She contended that she did not file it sooner because she was mentally incapacitated and hospitalized due to her accepted employment injury. Appellant further contended that, although she was aware of the 30-day time period for filing a CA-1 claim form, Mr. Sorenson advised her and others that he would complete any necessary claim forms and that she should wait to file a claim until a determination had been made about what happened to her. She also contended that Mr. Sorenson mistreated her and her coworkers, and that he deliberately delayed filling out a CA-1 claim form in a timely manner in retaliation against her for filing prior claims for work-related injuries. Even if these allegations are true, the Board notes that there are no exceptions to the requirement that a claim for continuation of pay be filed within 30 days of the date of injury, including error by the employing establishment.<sup>11</sup> Because appellant did not file her CA-1 claim form within 30 days of the June 19, 2006 employment injury, the Board finds that she was not entitled to continuation of pay.<sup>12</sup>

The Board notes that, although appellant is barred from receiving continuation of pay, she may be entitled to other types of compensation benefits under the Act. On September 8, 2006 the Office accepted her claim and explained that the decision denying her continuation of pay did not affect her entitlement to compensation benefits. Therefore, appellant may still claim wage-loss compensation for disability or claim compensation for medical treatment rendered due to the effects of the accepted employment injury.

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under section 8128 of the Act,<sup>13</sup> the Office's regulation provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>14</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>15</sup> When a claimant fails to meet one of the above

---

<sup>10</sup> *Robert E. Kimzey*, 40 ECAB 762 (1989).

<sup>11</sup> See *Dodge Osborne*, 44 ECAB 849 (1993); see *Teresa Samilton*, 40 ECAB 955 (1989); see *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>12</sup> *Loretta R. Celi*, 51 ECAB 560 (2000).

<sup>13</sup> 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, the Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application. 5 U.S.C. § 8128(a).

<sup>14</sup> 20 C.F.R. § 10.606(b)(1)-(2).

<sup>15</sup> *Id.* at § 10.607(a).

standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.

### **ANALYSIS -- ISSUE 2**

In a November 12, 2007 letter, appellant disagreed with the Office's June 14, 2007 decision which denied modification of its finding that she was not entitled to continuation of pay. The relevant issue in the case, whether appellant filed a timely written claim for continuation of pay due to her accepted employment injury for the period June 19 through August 3, 2006, is factual in nature.

In her reconsideration request, appellant repeated her earlier contentions. Further, her husband reiterated that appellant's CA-1 claim form was not timely filed because Mr. Sorenson told him not to worry about anything and that he would take care of the completion of any necessary paperwork. Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>16</sup> Appellant's contentions were previously made and addressed by the Office in its prior decisions and, thus, do not constitute relevant and pertinent new evidence not previously considered by the Office.

Appellant submitted statements from her coworkers which indicated that Mr. Sorenson promptly completed the necessary claim forms for their work injuries. A statement signed by appellant's coworkers indicated that they witnessed Mr. Sorenson's unprofessional and vindictive behavior at work. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>17</sup> The statements from appellant's coworkers failed to address whether she filed a CA-1 claim for continuation of pay within 30 days of her accepted June 19, 2006 employment injury. The Board, therefore, finds that this evidence does not require reopening appellant's claim for further review on the merits.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office. As she did not meet any of the necessary regulatory requirements, the Board finds that she is not entitled to further merit review.<sup>18</sup>

### **CONCLUSION**

The Board finds that appellant is not entitled to continuation of pay for her June 19, 2006 employment injury for the period June 19 through August 3, 2006. The Board further finds that the Office properly denied appellant's request for a merit review of her claim pursuant to 5 U.S.C. § 8128(a).

---

<sup>16</sup> *James W. Scott*, 55 ECAB 606, 608 n.4 (2004); *Freddie Mosley*, 54 ECAB 255 (2002).

<sup>17</sup> *D. Wayne Avila*, 57 ECAB 642 (2006).

<sup>18</sup> *See* 20 C.F.R. § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2008 and June 14, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 7, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board