

**United States Department of Labor
Employees' Compensation Appeals Board**

L.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Denver, CO, Employer**

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**Docket No. 08-1817
Issued: February 3, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 16, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 8, 2008, denying continuation of pay. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant is entitled to continuation of pay causally related to his accepted employment injury of November 1, 2007.

FACTUAL HISTORY

On March 20, 2008 appellant, then a 41-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that in November 2007¹ he sustained flexor tendinitis as a result of repetitive motion. He requested continuation of pay.

¹ Appellant did not state specifically the date the injury occurred.

The employing establishment, in a statement by Donna M. Loyd, a human resource management specialist, controverted the claim noting that appellant did not identify a specific date in November or identify any specific work factors. Ms. Loyd also indicated that it did not appear that appellant was claiming a traumatic injury as he was alleging repetitive motion.

On March 25, 2008 appellant also filed an occupational disease claim alleging that he sustained tendinitis in the right elbow, beginning November 2007 as a result of repetitive sorting of mail and opening and closing the door of his vehicle. The employing establishment noted that appellant stopped work on March 20 and returned on March 26, 2008.

In a March 28, 2008 duty status report, Dr. Edward McCleary, a Board-certified neurological surgeon, noted that appellant related that he had experienced pain in the right arm since November 2007 and diagnosed tennis elbow.

By letters dated April 2, 2008, the Office informed appellant and the employing establishment of the type of evidence needed to support his claim and requested that they submit such evidence within 30 days.

On April 8, 2008 the Office administratively closed appellant's occupational injury claim and processed the traumatic injury claim.

By decision dated May 8, 2008, the Office denied appellant's claim for continuation of pay on the grounds that his injury was not reported on a form approved by the Office within 30 days of the injury.

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 her 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

The Act's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant must:

“(1) Have a ‘traumatic injury’ as defined at § 10.5(ee) 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 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 also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

(2) File Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.”⁶

ANALYSIS

Appellant filed the traumatic injury claim on March 20, 2008, more than 30 days after the November 2007 injury. 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.⁷ The Board has held that the responsibility for filing a claim rests with the injured employee.⁸ Because appellant did not file his CA-1 claim form within 30 days of the November 2007 injury, the Board finds that he was not entitled to continuation of pay.⁹

CONCLUSION

The Board finds that the Office properly denied continuation of pay for appellant as he did not file his traumatic injury claim within 30 days following the injury.

⁶ 20 C.F.R. § 10.205(a)(1)-(3). See also *Carol A. Lyles*, 57 ECAB 265 (2005).

⁷ See *Dodge Osbourne*, 44 ECAB 849 (1993); *Theresa Samilton*, 40 ECAB 955 (1989) and *William E. Ostertag*, 33 ECAB 1925 (1982).

⁸ 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).

⁹ *Loretta R. Celi*, 51 ECAB 560 (2000).

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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