

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

C.S., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Kansas City, MO, Employer)

**Docket No. 11-1056
Issued: November 7, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2011 appellant filed a timely appeal from November 29, 2010 and March 11, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP) which denied his claim for continuation of pay as untimely filed. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 for his July 15, 2010 employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 17, 2010 appellant, then a 63-year-old customer service representative, filed a traumatic injury claim alleging that on July 15, 2010 he twisted his left knee while turning into a break area. He explained that his quad tendon injury was diagnosed as a severe sprain of the left quad tendon. Appellant stopped work on July 15, 2010 and returned on July 21, 2010. The employing establishment controverted his claim on the grounds that he did not timely file his claim to receive continuation of pay and that fact of injury, performance of duty and causal relationship were not established.²

On November 4, 2010 OWCP accepted appellant's claim for a left knee and quadriceps sprain.³

On November 29, 2010 the employing establishment controverted appellant's entitlement to continuation of pay because his claim was not filed within 30 days of the employment injury.

By decision dated November 29, 2010, OWCP denied appellant's claim for continuation of pay as untimely.

On December 3, 2010 appellant submitted a request for reconsideration and stated that he was confused about his entitlement to continuation of pay. He noted that the November 29, 2010 decision denied continuation of pay on the grounds that his Form CA-1 was untimely filed. However, in the initial September 30, 2010 denial decision, OWCP stated that his claim was considered to be timely filed. Appellant resubmitted its September 30 and November 4, 2010 decisions and his traumatic injury claim form.

By decision dated March 11, 2011, OWCP denied modification of the November 29, 2010 decision denying continuation of pay for appellant's July 15, 2010 employment injury as untimely filed. It pointed out that the timely filing discussed in its previous decision referred to the timely filing of appellant's traumatic injury claim to receive workers' compensation for his July 15, 2010 injury, not the timely filing of his claim to receive continuation of pay.

² In a decision dated September 30, 2010, OWCP denied appellant's claim finding that the medical evidence failed to demonstrate that his knee condition was causally related to the accepted July 15, 2010 injury. On October 15, 2010 appellant submitted a request for reconsideration.

³ On October 15, 2010 appellant filed a claim for leave buyback for the period July 15 to August 16, 2010 along with a time analysis form indicating that he used annual leave for the dates July 15, 19, 20 and August 16, 2010 and medical reports from Dr. Mark S. Humphrey, a Board-certified orthopedic surgeon. In a decision dated December 14, 2010, OWCP denied his claim for disability compensation for the period July 15 to August 16, 2010 finding that the medical evidence failed to establish that he was disabled from work as a result of the July 15, 2010 employment injury. On December 17, 2010 appellant submitted a request for reconsideration and a November 8, 2010 medical report from Dr. Humphrey.

LEGAL PRECEDENT

Section 8118 of FECA⁴ 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 or 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) 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 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 or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.⁶

ANALYSIS

OWCP accepted that on July 15, 2010 appellant sustained an injury to his left knee in the performance of duty. The record establishes that he did not file for continuation of pay within 30 days. Following July 15, 2010 the 30th day was Saturday August 14, 2010. Because the 30th day fell on a Saturday, appellant's claim would have been timely filed on Monday, August 16, 2010. He filed his traumatic injury claim on August 17, 2010, after the 30-day time period as specified in section 8118(a) and 8122(a)(2) of FECA.

The record does not establish that appellant filed a claim for continuation of pay within 30 days of his July 15, 2010 employment injury. Appellant is not entitled to continuation of pay. On appeal, he asserts that his claim was timely filed because the December 14, 2010 OWCP decision stated that a "timely compensation claim for compensation/continuation of pay was made by the claimant." As noted in the March 3, 2011 decision, however, this language referred to the timely filing of a traumatic injury claim within the three-year time period for traumatic injury claims as stated in section 8122. Claims that are timely under section 8122, however, are not necessarily timely under section 8118(a) for continuation of pay.⁷ Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury. Because FECA 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.⁸ Because appellant did not file this claim within 30 days, he is not entitled to continuation of pay.

⁴ 5 U.S.C. § 8118.

⁵ *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁶ *See also W.W.*, 59 ECAB 533 (2008); *P.R.*, Docket No. 08-2239 (issued June 2, 2009).

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

⁸ *Id.*

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for his July 15, 2010 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2011 and November 29, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 7, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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