BRB No. 99-0488

WAYNE SOMES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GATX TERMINALS	)	DATE ISSUED:
	)	
and	)	
	)	
CIGNA INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	DECISION and ORDER

Appeal of the Decision and Order of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Philip J. Rooney (Israel, Adler, Ronca & Gucciardo), New York, New York, for claimant.

Francis M. Womack III (Weber, Goldstein, Greenberg and Gallagher), Jersey City, New Jersey, for employer/carrier.

Before: SMITH and McGRANERY, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals the Decision and Order (98-LHC-1774) of Administrative Law Judge Ralph A. Romano denying benefits on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant sustained a work-related injury on August 4, 1992, when he cut the index finger of his right hand while working. A portion of the finger was amputated. Cl. Ex. 1.[1] He did not work from August 5, 1992, until October 4, 1992, and employer continued to pay claimant's salary during this time. Thereafter, claimant returned to work. The administrative law judge found no evidence that claimant filed a timely claim as required by Section 13(a) of the Act, 33 U.S.C. §913(a), and that claimant was not absolved from filing a claim. Consequently, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, contending that under the circumstances of this case he was not required to file a claim under Section 13. In the alternative, claimant asserts that medical reports submitted to the Department of Labor are adequate to constitute the filing of a claim under Section 13(a). Employer responds, urging affirmance of the administrative law judge's decision. Claimant has filed a reply brief.

Section 13(a) provides that a claim must be filed within one year after the date claimant is aware, or should have been aware, of the relationship between his injury and his employment. In cases in which compensation is paid without an award, a claim may also be filed within one year of the date of the last voluntary payment. 33 U.S.C. §913(a). A claim need not be filed on a particular form; thus any writing will suffice so long as it is sufficient to assert a right to compensation. *See Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990). *See also I.T.O. Corp. of Virginia v. Pettus*, 73 F.3d 523, 30 BRBS 6 (CRT) (4th Cir. 1996), *cert. denied*, 117 S.Ct. 49 (1996).

Initially, it is noted that claimant does not dispute that he has not filed a Form LS-203, Employee's Claim for Compensation. Claimant asserts that on the facts presented, applying the Section 13 bar is an unnecessary technicality and he maintains that the nature of his injury placed employer on notice that he sustained a permanent impairment. Claimant also contends that he received full wages from employer following the accident and therefore had no knowledge of the date on which to file a claim. Claimant cites *Grage v. J.M. Martinac Shipbuilding*, 21 BRBS 66 (1988), *aff'd on other grounds sub nom. J.M. Martinac Shipbuilding v. Director, OWCP*, 900 F.2d 180, 23 BRBS 127 (CRT)(9th Cir. 1990), arguing that the rationale underlying Section 13 does not apply where claimant is lulled into a false sense of security regarding his obligation to file a

[1]The parties stipulated that if the claim were timely filed, claimant would be entitled to 30 percent loss of use under schedule, based on Dr. Post's medical opinion. Cl. Ex. 1.

claim.

Claimant's reliance on *Grage* is unfounded. In *Grage*, claimant relied on a letter from the clinic to which his supervisor took him following his accident; this letter informed him he had seven years to file his claim. The Board held the claim was timely on these facts. On appeal, however, the United States Court of Appeals for the Ninth Circuit, while affirming on other grounds the Board's conclusion that the claim was timely, specifically rejected the rationale regarding claimant's reliance on the clinic's letter.[2] The court held that employer was not bound by the health care provider's inaccurate legal information as there was no basis for imputing the clinic's erroneous legal advice to the employer. *J.M. Martinac Shipbuilding,* 900 F.2d at 182-183, 23 BRBS at 128 (CRT). Thus, *Grage* does not support claimant's position, as there is no basis for concluding Section 13 does not apply merely because claimant received full wages following an injury.

While the Board and the courts have been liberal in allowing any writing which asserts a right to benefits to constitute a "claim" under the Act, claimant in this case does not point to any evidence in the record which discloses an intention to assert a right to compensation. *See Bingham v. General Dynamics Corp.*, 14 BRBS 614 (1982). Further, claimant's argument that there was no prejudice to employer is relevant to whether timely notice was given under Section 12, 33 U.S.C. §912, *see* 33 U.S.C. §912(d)(2), rather than to the filing of a claim under Section 13. Moreover, claimant's contention that he was ignorant of his right is not an excuse for failure to file. *See generally La Lande v. Gulf Oil Corp.*, 317 F. Supp. 692, 697 (W.D.La.1970). Accordingly, as claimant has not filed a claim, and his assertion that he is absolved from doing so is totally without support, his argument in this regard is rejected.[3]

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[2]The court held timely claimant's filing because claimant filed within one year of learning of the permanency of his condition, notwithstanding that claimant filed more than three years after the accident.

[3]Claimant states that employer has not filed a First Report of Injury. This is erroneous. Employer filed an LS-202 on August 5, 1992. Emp. Ex. 1. *See* 30 U.S.C. §930(a), (f). Therefore the Section 13 filing period is not tolled.

Claimant's alternate argument that the medical reports submitted to the Department of Labor constitute a filing under Section 13 because they report a partial amputation of the finger, thereby demonstrating the possibility of permanency, must fail as well. A timely filed physician's report which indicates a continuing disability may meet the filing requirement of Section 13(a). *See Grant v. Interocean Stevedoring, Inc.*, 22 BRBS 294 (1989)(G. Lawrence, J., concurring in part and dissenting in part); *Raimer v. Willamette Iron & Steel Co.*, 21 BRBS 98 (1988); *Peterson v. Washington Metropolitan Area Transit Authority*, 17 BRBS 114 (1984). None of Dr. Raju's three reports in evidence meets this requirement. Cl. Ex. 2. The record supports the administrative law judge's finding that in his final report filed on September 24,1992, Dr. Raju states that the injury will not result in any permanent loss of function. Where a medical report does not indicate the existence of any disability from work or anticipate any permanent effects, it will not be sufficient to constitute a claim. *See Peterson*, 17 BRBS at 116; *Bezanson v. General Dynamics Corp.*, 13 BRBS 928 (1981)(Miller, J., dissenting). Accordingly, the medical evidence in this case does not constitute a filing under Section 13.

Accordingly, the administrative law judge's Decision and Order is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge