

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDITH GLEASON and INTERNAL REVENUE SERVICE,  
PONTIAC POST OF DUTY, Pontiac, Mich.

*Docket No. 97-360; Submitted on the Record;  
Issued November 6, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.<sup>1</sup>

On July 10, 1996 appellant, then a 47-year-old group manager, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on April 23, 1996 she tripped and fell at work, whereby she suffered sprains in both wrists as well as a cut and bruise on her right knee. On the reverse of the form, appellant's supervisor advised that notice of the injury was received on April 23, 1996. Appellant was absent from work from April 24 to April 28, 1996. The Office of Workers' Compensation Programs subsequently accepted the claim for multiple contusions.

In a Form 9154, report of injury, dated April 29, 1996, appellant further described how her injury occurred. Appellant stated that her shoe got caught in carpet fiber, and that she fell on both hands and knees. The form indicated that appellant missed two days of work.

Appellant submitted April 23, 1996 medical records from an emergency room to document that she was treated for sprains in both wrists and an abrasion on her right knee.

In an August 26, 1996 decision, the Office denied appellant's entitlement to continuation of pay. The denial was based on the fact that the notice of injury and claim for compensation was not timely filed within 30 days of the April 23, 1996 injury date. The Office, however, noted that its decision did not affect appellant's entitlement to other compensation benefits.

By letter dated September 10, 1996 appellant requested reconsideration. Attached to her letter, she submitted another Form CA-1 which listed the notice of injury as April 29, 1996. She also indicated that the Office lost the original CA-1 Form and that the date of notice "could be

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<sup>1</sup> See 5 U.S.C. §§ 8101-8193.

April 29, 1996.” Appellant also stated in her September 10, 1996 letter that her original CA-1 Form had a clerical error because it listed an incorrect notice of injury as July 23, 1996. Appellant did not submit a copy of the reverse side of the form, the employer’s side, nor did the portion of the form she submitted contain a date stamp by the employing establishment or the Office within 30 days of April 23, 1996.

In a September 6, 1996 telephone conversation memorandum, a claims examiner called appellant in an attempt to clarify exactly when a CA-1 Form was filed. The claims examiner noted that appellant indicated that she was not positive that she completed a CA-1 Form on April 29, 1996 and that neither she nor anyone at the employing establishment had a record of a CA-1 Form being filed in April 1996. The Office provided appellant a copy of this memorandum on September 23, 1996 when it sought the employing establishment’s comments on the same memorandum as well as the assertions contained in appellant’s reconsideration request.

In a September 30, 1996 telephone conversation report, an official in the employing establishment’s workers’ compensation center disagreed with appellant’s assertions that a timely CA-1 Form had been filed.

On October 3, 1996 a workers’ compensation official with the employing establishment sent the Office a September 19, 1996 memorandum in which the employing establishment reviewed appellant’s claim file. The memorandum indicated that, shortly after the April 23, 1996 injury, appellant filed an injury report but did not file a CA-1 Form. It further stated that from the period June 12 to July 9, 1996, the employing establishment contacted appellant three times about filing a CA-1 Form so that her medical bills could be paid. The employing establishment noted that appellant’s manager confirmed that no CA-1 Form was received before July 1996. The employing establishment asserted that no CA-1 Form was completed by appellant before July 10, 1996 and that it was not until August 26, 1996, after appellant learned that continuation of pay had been denied, that she asserted that an earlier CA-1 Form had been filed.

In an October 4, 1996 decision, the Office denied modification of its prior decision after reviewing the merits of the claim. The Office found that a timely CA-1 Form was not filed and that the April 29, 1996 injury report did not indicate that appellant claimed benefits under the Act.

The Board finds that appellant’s claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Act.

Section 8118<sup>2</sup> of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee “who has filed a claim within the time specified in section 8112(a)(2)<sup>3</sup> of

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<sup>2</sup> 5 U.S.C. § 8118.

<sup>3</sup> 5 U.S.C. § 8122(a)(2).

this title.” The latter section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</sup>

Appellant filed a notice of traumatic injury and claim for continuation of pay/compensation on July 10, 1996. As this was more than 30 days after the April 23, 1996 injury, the claim for continuation of pay is barred by the applicable time limitation provision.

In the instant case, appellant acknowledges on appeal that she was “unfamiliar with the forms used to report injuries and request FECA leave” and that “it would appear that she did not file a CA-1 form” within thirty days of the injury. Appellant has also alleged that she filled out a CA-1 Form on April 29, 1996 but that the form was lost by the employing establishment. With respect to the latter scenario, however, appellant conceded that neither she nor her supervisor have a copy of a CA-1 form dated April 29, 1996 to verify that she timely filed a claim. Furthermore, the record contains no corroborating evidence to support the previous contentions that a CA-1 Form was filed on April 29, 1996.

Appellant also asserts that the employing establishment’s report of injury, Form 9154, dated April 29, 1996 satisfies the timely filing requirement in addition to reporting the injury to her supervisor.

The Board has held that responsibility for filing a claim rests with the injured employee.<sup>5</sup> Section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitations provision for filing a claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a)<sup>6</sup> which sets forth the filing requirements for continuation of pay.<sup>7</sup> There is, therefore, no provision in the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury. The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.<sup>8</sup>

Additionally, the applicable statute specifies that the notice must be given on a form approved by the Secretary of Labor.<sup>9</sup> The Board has consistently required that a notice for compensation must contain “words of claim” which could be construed as a claim for continuation of pay under section 8118 of the Act.<sup>10</sup> Accordingly, the Board has held that notices, such as narrative statements, forms other than the Form CA-1, or memoranda, which are submitted within the 30-day time period but which do not contain “words of claim” are

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<sup>4</sup> See *George A. Harrell*, 29 ECAB 338 (1978).

<sup>5</sup> See *Catherine Budd*, 33 ECAB 1011 (1982).

<sup>6</sup> 5 U.S.C. § 8118(a).

<sup>7</sup> 5 U.S.C. § 8122(d)(3); see *Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

<sup>8</sup> 33 ECAB 1925 (1982); see also *Patricia J. Kelsesky*, 35 ECAB 549 (1984).

<sup>9</sup> 5 U.S.C. § 8118.

<sup>10</sup> See *Robert E. Kimzey*, 40 ECAB 762, 765 (1989).

insufficient forms of notice with respect to<sup>11</sup> claims for continuation of pay under section 8118 of the Act. Also, the Board has held that oral notice is insufficient to satisfy the requirements of law,<sup>12</sup> and that the failure of a supervisor to submit proper notice of injury does not provide a basis for granting continuation of pay.<sup>13</sup>

Regarding the actual knowledge of the injury by the supervisor, the Board notes that while section 8122 of the Act provides an exception to filing a claim within the specified time limitation with respect to compensation for disability or death, the exception is not applicable to continuation of pay.<sup>14</sup> As discussed above, section 8118 of the Act provides for payment of continuation of pay, pursuant to the time specified in section 8122(a)(2). Therefore, it is clear in

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<sup>11</sup> See *id.*, (concerning appellant's narrative statement which described appellant's injury but did not contain any "words of claim"); *Robert P. Shorrock, III*, 32 ECAB 1070 (1981) (concerning appellant's submitted intra-office transmittal slip which did not contain any "words of claim"); *Joseph Triolo, Jr.*, 32 ECAB 1216 (1981) (concerning appellant's submitted form, known as Form 1051, which did not contain any "words of claim"); *Janet M. Sauls*, 31 ECAB 1835 (1980) (concerning appellant's submitted memorandum which did not contain any "words of claim").

<sup>12</sup> See *Nicholas A. Dalo*, 39 ECAB 506, 512 (1988). *Russell P. Chambers*, 32 ECAB 550, 552 (1981); *Lois M. Townsend*, 29 ECAB 470, 471 (1978). In each of these cases, the claimant asserted that notification of the employment injury had been provided to the official supervisor and that the official supervisor had either failed to provide or submit proper notice of injury, or had advised that the forms could be filled out at a later time. The Board found that since written notice of injury had not been timely filed, the claimant was not entitled to continuation of pay.

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 8122(a) reads as follows: "an original claim for compensation for disability or death must be filed within three years after the injury or death." The statute provides an exemption, which states that a claim may be regarded timely if an immediate supervisor had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate supervisor reasonably on notice of an on-the-job injury or death.

the statute that the exception of the actual knowledge of a superior contained within section 8122(a)(1) is not implicated when determining continuation of pay.<sup>15</sup>

This decision does not effect appellant's possible entitlement to compensation in the form of medical benefits or wage-loss benefits.

The October 4 and August 26, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.  
November 6, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>15</sup> *Sandra N. Phillips*, 43 ECAB 311 (1991).