

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN SANTIAGO and U.S. POSTAL SERVICE,
POST OFFICE, Mayaquez, P.R.

*Docket No. 96-2516; Submitted on the Record;
Issued September 4, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice within 30 days, the time specified by the Federal Employees' Compensation Act.

On January 18, 1995 appellant, then a 41-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that on December 12, 1994 he suffered a nervous breakdown as a result of a supervisor named Morales chasing him with a postal vehicle in the employing establishment's parking lot and screaming at him in the course of his federal employment. Appellant's supervisor signed the form on January 19, 1995, but indicated that he was not working on December 12, 1994, the day of the injury.

In an accompanying statement dated January 18, 1995, appellant indicated that Morales pursued him with a postal vehicle on December 12, 1994. He stated that Morales continually harassed and persecuted him prior to this event. He indicated that he attempted to avoid Morales after being chased, but that Morales screamed at him, harassed him and requested that appellant fight him. Appellant stated he feared injury and that his nerves were "all over me." He also reported that Morales previously struck another employee. Appellant stated that he notified Supervisor Francisco Oms of the incident the next day, but that he was not provided with the proper forms. Appellant restated this in a separate statement also dated January 18, 1995, but added that he notified the union of the entire incident.

Appellant also presented a statement dated December 14, 1994 recounting the incident with Supervisor Morales on December 12, 1994.

In an attending physician's report dated January 18, 1995, Dr. Rafael M. Baez, a Board-certified psychiatrist, indicated that he initially treated appellant for a single episode of major depression on December 14, 1994.

On January 19, 1995 Supervisor Oms stated that appellant never asked him for a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation.

On February 27, 1995 Supervisor Oms stated that appellant informed him on December 13, 1994 that he was unable to work due to the December 12, 1994 incident with Supervisor Morales. He stated that a shop steward brought him a disability certificate on December 16, 1994 for the period of December 14 through December 28, 1994. He stated that another disability certificate was presented for the period of December 18, 1994 through January 28, 1995. He reported that appellant presented his Form CA-1 on January 19, 1995 and that neither appellant nor his representative requested one before that time.

Supervisor Morales provided a statement which indicated that an incident occurred on December 12, 1994, but noted that the incident only involved appellant acting abusively towards him.

On March 3, 1995 both Supervisors Ramos and Quinones indicated that appellant never requested Form CA-1s from them.

On March 6, 1995 Dr. Baez repeated his diagnosis of major depression, single episode moderate and indicated that the generalized anxiety disorders were due to his job and the December 12, 1994 trauma.

By decision dated March 20, 1995, the Office rejected appellant's claim because fact of injury was not established.

On March 22, 1995 a union official, Ralph J. Hernandez, wrote to verify a pattern of harassment at the employing establishment. He indicated that following the December 1994 incident, the supervisor in charge provided appellant with the wrong form. He stated that appellant was subsequently placed on sick leave without his consent. He further indicated that when appellant provided the correct form, the employing establishment sent in a blank time card to cause appellant financial hardship.

On April 18, 1995 appellant requested reconsideration. In support, appellant submitted a personal statement documenting the incident on December 12, 1994 and statements from co-workers documenting the same incident and previous patterns of harassment

By decision dated May 26, 1995, the Office vacated its previous decision dated March 20, 1995 and accepted appellant's claim for the condition "major depression, single episode." Appellant subsequently received appropriate compensation benefits.

By decision dated August 7, 1995, the Office determined that appellant was not entitled to continuation of pay for his absence from work from December 14, 1994 through January 27, 1995, because the injury was not reported on a form approved by the Office within 30 days following the injury. The Office informed appellant that this decision concerned only continuation of pay and did not affect his entitlement to compensation benefits.

The Board finds that the Office properly denied continuation of pay on the grounds that appellant failed to give notice within 30 days.

Section 8118 of the Act¹ authorizes the 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 his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this [t]itle.”² The context of section 8122 makes clear that this means within 30 days of the date of injury.³ Section 10.201(a)(3) of the implementing federal regulations⁴ provides: The employee files claim for a period of wage loss, as required by 5 U.S.C. § 8118(a), within 30 days of the injury on a form approved by the Secretary. (Form CA-1 may be used for this purpose). Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.⁵

In the present case, appellant filed his Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation on January 18, 1995, more than 30 days after his injury on December 12, 1994. Although appellant and his union representative assert that the employing establishment provided him with an incorrect form and caused appellant to file his Form CA-1 more than 30 days after his injury, they did not present any evidence establishing the existence of the incorrect form and did not allege that appellant attempted to file the incorrect form or any other filing containing words of claim.⁶ Moreover, appellant’s supervisors indicated that appellant never requested a form prior to his filing the Form CA-1 on January 18, 1995. The evidence of record, therefore, only establishes that appellant filed his Form CA-1 more than 30 days after the December 12, 1994 injury. Consequently, appellant is not entitled to continuation of pay.

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122(a)(2).

³ *Bobby W. Anderson*, 41 ECAB 833, 836 (1990); see 20 C.F.R. § 10.201(a)(3).

⁴ 20 C.F.R. § 201(a)(3).

⁵ *William E. Ostertag*, 33 ECAB 1925, 1926-27 (1989).

⁶ *Myra Lenburg*, 36 ECAB 487 (1995).

The decision of the Office of Workers' Compensation dated August 7, 1995 is hereby affirmed.

Dated, Washington, D.C.
September 4, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member