

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of REBECCA L. LOHMAN and DEPARTMENT OF VETERANS AFFAIRS,
LOAN GUARANTY DIVISION, Seattle, WA

*Docket No. 98-237; Submitted on the Record;
Issued July 27, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified.

Appellant alleges that on December 18, 1996 when she was 51 years old, she sustained an injury when she slipped and fell on the cafeteria floor while working for the employing establishment as a loan specialist. On February 5, 1997 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that as a result of this incident, she sustained injuries to her right shoulder, arm (including elbow) and left ankle.

By decision dated February 21, 1997, appellant's claim was accepted for the repair of her right rotator cuff tear. However, the Office denied appellant's request for continuation of pay finding that her claim was not filed within 30 days of the injury.

In a letter dated July 8, 1997, received by the Office on July 10, 1997, appellant requested reconsideration of the denial of continuation of pay. In a second letter of the same date, appellant argued that she reported the fall to her supervisor and sought medical assistance immediately; that she thought the injury was just temporary; and that she "had not been informed by the supervisory personnel that she should file a claim, much less in a timely manner." Appellant concluded that management was unaware of the filing procedures, and that she should "not be penalized" because she did not "have the information needed to file the claim within this 30-day period." By a July 2, 1997 letter accompanying appellant's reconsideration request, the employing establishment wrote a letter to the Office, stating that as management was aware of appellant's injury and "failed to properly counsel her," the denial of continuation of pay should be reconsidered.

By decision dated July 16, 1997, the Office denied appellant's request for reconsideration again noting that appellant failed to file written notice of traumatic injury within 30 days of the injury.

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified by the Federal Employees' Compensation Act.

Section 8118(a) of the Act¹ 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 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 title." Section 8122(a)(2)² provides that written notice of the injury shall be given "within 30 days."

Appellant filed a Form CA-1, notice of traumatic injury, on February 5, 1997. As this was more than 30 days after the December 18, 1996 injury, the claim for continuation of pay is barred by the applicable time limitation provision. With respect to appellant's contention that the employing establishment did not provide appropriate guidance on how to file a claim, the Board has held that the responsibility for timely filing of a claim rests with the injured employee.³ The Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions for filing a claim for compensation because of "exceptional circumstances," is not applicable to section 8118(a) which sets forth the filing requirements for continuation of pay.⁴ The rationale for this finding is set forth fully in the Board's decision in *William E. Ostertag*.⁵ There is, therefore, no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury.⁶ With respect to appellant's contention that she provided her supervisor with oral notice of injury within the 30-day period, the Board has held that oral notice to the supervisor is insufficient to satisfy the requirements of 5 U.S.C. § 8118.⁷ Thus, since appellant filed the Form CA 1, notice of traumatic injury, and claim for continuation of pay/compensation more than 30 days after the December 18, 1996 injury, her claim for continuation of pay is barred by the applicable time limitation. This decision does not affect appellant's entitlement to compensation in the form of medical benefits or wage-loss benefits.

The decisions of the Office of Workers' Compensation Programs dated July 16 and February 21, 1997 are affirmed.

¹ 5 U.S.C. § 8118(a).

² 5 U.S.C. § 8122(a)(2).

³ *Catherine Budd*, 33 ECAB 1011, 1014 (1982).

⁴ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

⁵ *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

⁶ *Dodge Osborne*, *supra* note 4 at 855.

⁷ *See Russell P. Chambers*, 32 ECAB 550 (1981).

Dated, Washington, D.C.
July 27, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member