

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM A. JACKSON and DEPARTMENT OF VETERANS AFFAIRS,  
CONCORD VETERANS CENTER, Concord, CA

*Docket No. 98-773; Submitted on the Record;  
Issued October 14, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) 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; and (2) whether appellant established that he sustained a herniated disc as a result of his October 23, 1996 employment incident.

The Board has duly reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined, in its February 7, 1997 decision, that appellant was not entitled to continuation of pay inasmuch as he did not file his claim for a traumatic injury within 30 days of the date of injury.

On January 6, 1997 appellant, then a 50-year-old social worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on October 23, 1996 he sustained an injury to his back while moving office furniture. He described his injury as extreme pain in his buttocks, as well as pain in his left leg and ankle. Appellant ceased working on October 28, 1996 and returned to work on January 13, 1997. In a decision dated February 7, 1997, the Office accepted appellant's claim for "low back strain." The Office also issued a second decision that same day advising appellant that he was not entitled to continuation of pay inasmuch as he failed to submit his claim within 30 days of the date of injury. Appellant subsequently received appropriate wage-loss compensation and medical benefits.

Section 8118 of the Act provides for the authorization 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.”<sup>1</sup> Section 8122(a)(2) provides that written notice of injury shall be given “within 30 days” of the date of injury.<sup>2</sup>

The Board has held that the responsibility for filing a claim rests with the injured employee.<sup>3</sup> Furthermore, although section 8122(d)(3) of the Act allows the Office to excuse a failure to comply with the time limitation provision for filing a claim for compensation because of “exceptional circumstances,” the Board has held that section 8122(d)(3) is not applicable to the filing requirements for continuation of pay under section 8118(a).<sup>4</sup> Consequently, there is no provision under the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the date of injury.<sup>5</sup> Since appellant filed the instant claim approximately two and a half months after the October 23, 1996 employment-related injury, his claim for continuation of pay is barred by the applicable time limitation provision.

The Board also finds that appellant failed to establish that he sustained a herniated disc as the result of his October 23, 1996 employment incident.

On appeal, appellant argues that he has a herniated disc and notes his disagreement with the Office’s decision to classify his October 23, 1996 injury as a low back strain. Appellant explained that his orthopedist, who he first consulted with in December 1996, diagnosed his condition as a herniated disc at L5-S1.

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed under the Act, that an injury was sustained in the performance of duty and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.<sup>6</sup> Causal relationship must be established by rationalized medical opinion evidence.<sup>7</sup>

At the time the Office accepted appellant’s claim for low back strain, the record did not include a medical opinion diagnosing the presence of a herniated disc. However, subsequent to the Office’s February 7, 1997 acceptance of the claim, appellant submitted additional medical evidence. Inasmuch as the Board’s review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant’s newly submitted

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<sup>1</sup> 5 U.S.C. § 8118(a) and (b)(2).

<sup>2</sup> 5 U.S.C. § 8122(a)(2); *see George A. Harrell*, 29 ECAB 338 (1978).

<sup>3</sup> *See Catherine Budd*, 33 ECAB 1011 (1982).

<sup>4</sup> 5 U.S.C. § 8122(d)(3); *see Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

<sup>5</sup> *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>6</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence.<sup>8</sup> Accordingly, appellant has failed to establish that he sustained a herniated disc as a result of his October 23, 1996 employment injury.

The decisions of the Office of Workers' Compensation Programs dated February 7, 1997 are, hereby, affirmed.

Dated, Washington, D.C.  
October 14, 1999

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> 20 C.F.R. § 501.2(c). Appellant may, however, submit a request for review to the Office pursuant to 5 U.S.C. § 8128.