

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES K. EGER and ENVIRONMENTAL PROTECTION AGENCY,  
Atlanta, GA

*Docket No. 98-673; Submitted on the Record;  
Issued September 14, 1999*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay.

On May 22, 1997 appellant, then a 36-year-old geologist, submitted an occupational disease claim form alleging that he sustained an injury in the performance of duty while working in flood areas. He indicated on the claim form that he first became aware of his condition on April 18, 1997 and that his condition might have been caused or aggravated by his employment on May 2, 1997. The Office accepted that he sustained bacterial meningitis and osteomyelitis of the right hip in the performance of duty.

In a written statement accompanying his claim form, appellant stated that he worked from March 19 to April 22, 1997<sup>1</sup> assessing conditions resulting from floods in Kentucky. He stated that on or about April 18, 1997 he developed symptoms of his infection which included pain and swelling in the neck area.

In a report dated May 22, 1997, Dr. Alan D. Einstein, an internist, stated that appellant's diagnoses included cellulitis, synovitis, eosinophilic granuloma, meningitis, a history of von Willebrand's disease and severe cervical strain. He related his opinion that appellant's cellulitis was caused by exposure to contaminated water and that his cervical strain and synovitis was caused, at least in part, by multiple helicopter trips. Dr. Einstein stated that appellant was also treated by a neurologist and infectious disease specialist regarding other conditions caused by his work.

In a report dated July 11, 1997, Dr. Andrew Pugliese, a Board-certified internist specializing in infectious diseases, related that appellant was diagnosed on May 1, 1997 with

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<sup>1</sup> Appellant's supervisor stated that he performed his flood assessment duties from March 19 to April 18, 1997.

staph aureus osteomyelitis and bacteremia. He related that appellant was admitted to the hospital on April 28, 1997 with high fever and chills which began on April 18, 1997. He stated that most likely appellant had a three- to five-day incubation period, making the date of inoculation April 13, 1997 at the earliest, while appellant was working in flood areas. He stated that the trauma which caused the illness could have been a scratch which appellant related was a daily hazard while working in the flood area.

In a letter dated August 14, 1997, appellant stated that he wished to amend his claim to a traumatic injury claim. He stated that when he first submitted his claim his conditions were in an advanced state and he was using heavy doses of medication and therefore his decision-making facilities were impaired enough to preclude him from fully understanding all Office claim requirements. Appellant also stated that he had been informed of additional medical facts by his doctors which he did not have at the time he filed his claim. He stated that his physician had concluded, by his history of working in flooded areas, that his infection was related to exposure to contaminated waters harboring organisms and that a simple scratch or dermal exposure to these organisms caused his infection. Appellant stated that on April 15, 1997 he was inspecting flood debris which included portions of houses, propane tanks, chemical containers and other debris and lost his footing and fell onto a small pile of debris. He stated that he punctured his right hand and scratched his right arm and three days later, on April 18, 1997, he began having symptoms.

In a letter dated August 14, 1997, the employing establishment asked that the Office reconsider appellant's claim as a traumatic injury claim rather than an occupational disease claim.

By decision dated September 30, 1997, the Office denied appellant's claim for continuation of pay on the grounds that he did not file his claim within 30 days of the date of injury as required. The Office stated that his time began to run on April 15, 1997 but he did not file his claim until May 22, 1997.

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

Section 8118(a) of the Act 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."<sup>2</sup> Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the date of the injury.<sup>4</sup>

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<sup>2</sup> 5 U.S.C. § 8118(a).

<sup>3</sup> 5 U.S.C. § 8122(a)(2).

<sup>4</sup> *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

The document in the case record that serves as a claim for continuation of pay is appellant's occupational disease claim form submitted on May 22, 1997. Appellant later stated that he erred in submitting an occupational disease claim form and should have submitted a claim for a traumatic injury. In a letter dated August 14, 1997, he stated that on April 15, 1997 he was inspecting flood debris which included portions of houses, propane tanks, chemical containers and other debris and lost his footing falling onto a small pile of debris. He stated that he punctured his right hand and scratched his right arm and three days later, on April 18, 1997, he began having symptoms. However, appellant's claim form was filed on May 22, 1997, not within 30 days of his claimed traumatic injury on April 15, 1997. Therefore, as his claim form was filed more than 30 days after his claimed April 15, 1997 injury, his claim for continuation of pay is barred by statute.

The decision of the Office of Workers' Compensation Programs dated September 30, 1997 is affirmed.

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

Michael J. Walsh  
Chairman

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member