

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHANG C. WANG and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 98-1224; Submitted on the Record;
Issued September 9, 1999*

DECISION and ORDER

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

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.

On December 10, 1997 appellant, then a 44-year-old unassigned postal worker, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on January 23, 1997 she sustained a contusion of the left elbow, knee, lower back trunk and muscle strain while lifting up trays in the course of her federal employment. Appellant stopped work on January 24, 1997 and returned to work on January 26, 1997. On January 31, 1998 the Office of Workers' Compensation Programs denied continuation of pay because appellant's claim was not filed within 30 days of the date of injury. The Office noted that its decision did not affect appellant's entitlement to other compensation benefits.¹

On appeal, appellant stated:

"I reported my injury and wrote a statement to my Supervisor, John Narvaez, as soon as it occurred on January 23, 1997. To verify this fact there were two witnesses that acknowledged my injury and knew that I had reported it immediately. [They] are the following: (1) Mr. Darrell Martin, M.D.O.; and (2) Mr. Chi Shih / co-worker. As a result my supervisor did not do the paperwork correctly, therefore it is not my fault. Please collect the necessary evidence from John Narvaez...."

¹ On February 2, 1998 the Office denied appellant's claim for compensation benefits for failure to establish fact of injury. The Office stated that the evidence of record established that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury. Since this decision has not been appealed to the Board, it will not be addressed.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of the Act.

Section 8118 of the Act² 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 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."³ 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.⁴

In this case, appellant filed a Form CA-1 on December 10, 1997 approximately 10 months later and more than 30 days after the January 23, 1997 alleged injury occurred. The responsibility for filing a claim rests with the injured employee.⁵ Moreover, 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)⁶ which sets forth the filing requirements for continuation of pay.⁷ 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. 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 January 23, 1997 alleged injury, her claim for continuation of pay is barred by the applicable time limitation provision. Furthermore, although appellant alleges on appeal that there are two witnesses who knew that she had immediately informed her supervisor of the alleged incident on January 23, 1997, there is no supported evidence in the record. This decision does not affect appellant's possible entitlement to compensation in the form of medical benefits or wage-loss benefits as indicated by the Office in its January 31, 1998 decision.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8118.

⁴ *George A. Harrell*, 29 ECAB 338 (1978).

⁵ *Catherine Budd*, 33 ECAB 1011 (1982).

⁶ 5 U.S.C. § 8118(a); *William E. Ostertag*, 34 ECAB 815 (1983).

⁷ 5 U.S.C. § 8122(d)(3).

The decision of the Office of Workers' Compensation Programs dated January 31, 1998 is hereby affirmed.

Dated, Washington, D.C.
September 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member