

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY P. SHUFORD and DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY, Aiken, SC

*Docket No. 98-1290; Submitted on the Record;
Issued July 20, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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.

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 March 9, 1998 decision that appellant was not entitled to continuation of pay because she did not file her claim for a traumatic injury within 30 days of her injury.

Section 8118 of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim 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."¹ 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.²

Appellant, then a 55-year-old program assistant, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, on January 26, 1998. As this was more than 30 days after her December 9, 1997 injury, and as the record contains no evidence that appellant submitted any other form of written notice of her claim to her supervisor, her claim for continuation of pay is barred by the applicable time limitation provision.

Appellant's supervisor, H. Gibson Solomons, submitted a statement explaining that he did not file the Form CA-1 until January 26, 1998, because he did not fully understand the process, as appellant's claim was the first to arise since he started in his position.³ The Board

¹ 5 U.S.C. § 8118.

² *George A. Harrell*, 29 ECAB 338 (1978).

³ The portion of the CA-1 form completed by Mr. Solomons further indicates that "notice" of appellant's injury

has held, however, that the responsibility for filing a claim rests with the injured employee.⁴ Further, the Board has held that 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),⁵ which sets forth the filing requirements for continuation of pay.⁶ Accordingly, there is 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. The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.⁷ As a result, regardless of the reason appellant failed to file her claim within 30 days of her injury, her claim for continuation of pay is barred.

The March 9, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.⁸

Dated, Washington, D.C.
July 20, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

was received by him on December 9, 1997, the date it occurred. The Board has held, however, that mere notice of injury, even if written, is insufficient to meet the requirements of the Act if it does not contain “words of claim.” See *Richard C. Cruson*, 34 ECAB 1714 (1983). In this case, however, there is no indication in the record that the notice of injury conveyed to appellant’s supervisor was even in writing, the first requirement of a claim.

⁴ See *Catherine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a).

⁶ *Id.* at § 8122(d)(3); see *Michael R. Hrynychuk*, 35 ECAB 1094 (1984).

⁷ 33 ECAB 1925 (1982); see *Patricia J. Kelsesky*, 35 ECAB 549 (1984).

⁸ The Board notes that, subsequent to the March 9, 1998 Office decision, which appellant appealed to the Board by letter postmarked March 13, 1998, the Office proceeded with the medical and factual development of the claim. The Board cannot consider any evidence submitted after the Office’s March 9, 1998 decision, however, as it is precluded from reviewing any evidence which was not before the Office at the time of the final decision on appeal; see 20 C.F.R. § 501.2(c).