

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of RUEL J. YARNELL and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTICS AGENCY, Stockton, CA

*Docket No. 99-313; Submitted on the Record;  
Issued May 24, 2000*

---

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to continuation of pay.

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 July 20, 1998 decision, that appellant was not entitled to continuation of pay as he did not file written notice of injury on a form approved by the Secretary of Labor within 30 days of the injury he sustained in December 1994.

Section 8118<sup>1</sup> of the Federal Employees' Compensation 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)<sup>2</sup> of this title." 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.<sup>3</sup>

Appellant filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, in April 1995.<sup>4</sup> As this was more than 30 days after the December 1994 injury, the claim for continuation of pay is barred by the applicable time limitation provision.

---

<sup>1</sup> 5 U.S.C. § 8118.

<sup>2</sup> *Id.* at § 8122(a)(2).

<sup>3</sup> *See George A. Harrell, 29 ECAB 338 (1978).*

<sup>4</sup> Although there is some uncertainty as to the date appellant filed his claim with his supervisor, the record makes clear that it took place several months after the reported injury.

The Board has held that the responsibility for filing a claim rests with the injured employee.<sup>5</sup> 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),<sup>6</sup> which sets forth the filing requirements for continuation of pay.<sup>7</sup> 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. The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.<sup>8</sup> Accordingly, because appellant filed the Form CA-1 more than 30 days after the December 1994 injury, his claim for continuation of pay is barred.

The July 20, 1998 decision of the Office of Workers’ Compensation Programs is affirmed.

Dated, Washington, D.C.  
May 24, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>5</sup> See *Catherine Budd*, 33 ECAB 1011 (1982).

<sup>6</sup> 5 U.S.C. § 8118(a).

<sup>7</sup> *Id.* at § 8122(d)(3); see also *Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

<sup>8</sup> 33 ECAB 1925 (1982); see also *Patricia J. Kelsesky*, 35 ECAB 549 (1984).