

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENISE M. GREEN and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Milwaukee, WI

*Docket No. 00-696; Submitted on the Record;
Issued January 3, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

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 May 19, 1999 appellant, then a 47-year-old secretary, filed a claim for traumatic injury (Form CA-1) alleging that she sustained a swollen right hand and wrist on April 13, 1999 while in the performance of duty.

By letter dated June 7, 1999, the Office of Workers' Compensation Programs advised appellant that she needed to submit medical evidence in support of her claim.

In a medical report dated June 14, 1999, Dr. John T. Kroner, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant had right hand and wrist tendinitis and that she should type no more than two hours a day for three weeks.

By letter dated July 12, 1999, the Office accepted appellant's claim for right hand and wrist tendinitis. However, by letter of the same date, the Office advised appellant that she was not entitled to continuation of pay because she failed to notify her supervisor within 30 days from the date of the injury.¹

On appeal, appellant stated that she notified her supervisor of the April 13, 1999 employment incident on the date of its occurrence; that the supervisor completed a form report supplied by the employing establishment; and that she was unaware that an actual Form CA-1 was required. Appellant attached the form completed by her supervisor.

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

¹ On November 2, 1999 appellant filed a claim for wage loss claiming lost wages from October 24 to November 23, 1999. This claim is not before the Board.

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 May 19, 1999, more than 30 days after the April 13, 1999 employment 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 April 13, 1999 employment injury, her claim for continuation of pay is barred by the applicable time limitation provision. This decision does not affect appellant’s possible entitlement to compensation in the form of wage-loss benefits as indicated by the Office in its July 12, 1999 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 July 12, 1999 is hereby affirmed.⁸

Dated, Washington, DC
January 3, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member

⁸ The Board notes that this case record contains evidence which was submitted subsequent to the Office's July 12, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).