

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT M. KLINT and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION, San Antonio, TX

*Docket No. 00-2515; Submitted on the Record;  
Issued June 15, 2001*

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DECISION and ORDER

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

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provisions of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.<sup>1</sup>

On March 21, 2000 appellant, then a 33-year-old special agent, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). He alleged that on August 28, 1998 he injured his right rotator cuff during swat tryouts. Appellant did not stop work.

In an April 6, 2000 attending physician's report, Dr. Scott Sledge, a Board-certified orthopedic surgeon, indicated that appellant injured his right shoulder doing pull-ups in September 1998. He checked the box "yes" that he believed appellant's condition was caused or aggravated by an employment activity and explained that the pull-ups were done in training for appellant's employment.

By letter dated June 22, 2000, the Office of Workers' Compensation Programs requested additional factual and medical evidence.

In a June 28, 2000 statement, appellant indicated that his injury was not immediately noticed within the 30 days after the injury occurred. He explained that this was due in part because of the physical exertion of the activity and normal soreness felt after such an activity. Appellant indicated that the injury occurred as a result of the combined activities of pull-ups (with 25 pounds of extra weight) and a 500-yard run carrying approximately 50 pounds of ammunition. He indicated he did not realize he was injured at the time and therefore, he did not immediately make a supervisor aware of the injury. Appellant also indicated that the immediate effect was a sore right shoulder. He indicated the delay was caused by his "misinformed ability to shake it off and/or just wait for the soreness to go away until he thought it would heal." The

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<sup>1</sup> See 5 U.S.C. §§ 8101-8193.

Office accepted appellant's claim for right shoulder subluxation and right shoulder subscapular tear on July 22, 2000.

In a July 22, 2000 decision, the Office denied appellant's entitlement to continuation of pay. The denial was based on the fact that the notice of injury and claim for compensation was not timely filed within 30 days of the August 28, 1998 injury date. The Office, however, noted that its decision did not affect appellant's entitlement to other compensation benefits. Additionally, the Office indicated that appellant could submit a claim for wage loss by filing a Form CA-7.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Act.

Section 8118<sup>2</sup> of the Act provides for payment of continuation of pay, not to exceed 45 days, to an employee "who has filed a claim within the time frame specified in section 8112(a)(2)<sup>3</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>4</sup>

Appellant filed a notice of traumatic injury and claim for continuation of pay/compensation on March 21, 2000. As this was more than 30 days after the August 28, 1998 injury, the claim for continuation of pay is barred by the applicable time limitation provision.

With respect to the circumstances that appellant maintains prevented him from filing his claim within 30 days of his injury, the Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions for filing a claim for compensation because of "exceptional circumstances" is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay.<sup>5</sup>

This decision does not effect appellant's entitlement to compensation in the form of medical benefits or wage-loss benefits.

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<sup>2</sup> 5 U.S.C. § 8118.

<sup>3</sup> 5 U.S.C. § 8122(a)(2).

<sup>4</sup> See *George A. Harrell*, 29 ECAB 338 (1978).

<sup>5</sup> See *Dodge Osborne*, 44 ECAB 849 (1993); see *Teresa Samilton*, 40 ECAB 955 (1989); see *William E. Ostertag*, 33 ECAB 1925 (1982).

The July 22, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 15, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member