

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. WOODS and U.S. POSTAL SERVICE, CENTRAL PROCESSING
& DISTRIBUTION CENTER, Chicago, IL

*Docket No. 00-2178; Submitted on the Record;
Issued May 29, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant is entitled to continuation of pay for her July 24, 1999 employment injury.

On September 8, 1999 appellant, then a 45-year-old mailhandler, filed a claim for an injury to her arm, neck and back sustained on July 24, 1999 by lifting mail. She stopped work on July 27, 1999 and returned to limited duty on September 6, 1999. The Office of Workers' Compensation Programs accepted that appellant sustained a cervical strain on July 24, 1999.

By decision dated December 1, 1999, the Office found that appellant was not entitled to continuation of pay for the reason that she did not file written notice within 30 days. This Office letter advised appellant: "This decision concerns continued pay only and does not affect your entitlement to other compensation benefits. You may claim compensation for wage loss resulting from this decision by filing Form CA-7."

Appellant requested reconsideration, stating that on July 24, 1999 she asked the supervisor in charge for a pass to first aid, that the medical unit was closed because it was Saturday and that the acting supervisor told her to go home and that she would write the accident report the next day. She stated that she wrote down what happened and had it date stamped by the time keeping office, that she then went to the emergency room and that on August 8, 1999 she called the employing establishment because she had not been paid and requested an Office Form CA-1. Appellant submitted her note describing the events of July 24, 1999; this note was date stamped July 24, 1999. She also submitted the employing establishment's August 6, 1999 letter requesting that the enclosed Form CA-1 be completed and returned to appellant's supervisor along with a doctor's statement that she was unable to work. By telephone call on February 1, 2000, appellant alleged that she sent a Form CA-1 to the employing establishment on August 12, 1999 by regular mail and that her supervisor told her that the employing establishment had her form in the absence control room file.

By letters dated February 1 and 15, 2000, the Office requested that the employing establishment comment on appellant's allegations. In a February 8, 2000 statement, the acting supervisor on July 24, 1999 stated that appellant told her that evening that she needed to go to the medical unit, that she could not find the accident report papers and did not know how to fill them out and that she told appellant to write on a piece of paper what happened. Appellant's supervisor stated that she did not receive a Form CA-1 from appellant or tell her that her form was in the absence control office.

By decision dated March 1, 2000, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

Section 8118 of the Federal Employees' Compensation Act¹ 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 a 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." Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8119. Section 8119 requires that written notice of the injury shall be given to the employee's immediate superior within 30 days after the injury.

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

Appellant filed her notice of injury on September 8, 1999, more than 30 days after the injury on July 24, 1999. She stated that she reported the injury on the date of its occurrence to her acting supervisor, who told her that she would complete a claim form the following day. However, the Office's regulations make it clear that it is appellant's responsibility to file Office Form CA-1 within 30 days of the injury.² Appellant's oral notice is not sufficient to satisfy the notice requirements of the Act, nor is her statement date stamped July 24, 1999, even if it was submitted to her supervisor, since it does not contain "words of claim."³ The employing establishment provided appellant with a Form CA-1 by letter dated August 6, 1999, but the evidence does not establish that appellant submitted the completed form to the employing establishment at any time before she completed a Form CA-1 on September 8, 1999.

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. The rationale for this finding is set forth fully in the Board's decision in *William E. Ostertag*.⁴ There is no provision under the Act for excusing an

¹ 5 U.S.C. § 8118.

² 20 C.F.R. § 10.210; see *Dodge Osborne*, 44 ECAB 849 (1993) (the claimant's assertion that he thought it was his supervisor's responsibility to complete the claim form found unavailing in claim for continuation of pay).

³ *Saundra N. Phillips*, 43 ECAB 311 (1991).

⁴ 33 ECAB 1925 (1982).

employee's failure to file a claim for continuation of pay within 30 days of the employment injury.⁵

Even though appellant is not entitled to continuation of pay, her claim was timely filed so as to make her eligible for consideration of other compensation benefits under other provisions of the Act, including compensation for disability for work. The Office informed appellant of her possible entitlement to these benefits in its decision dated December 1, 1999 and invited appellant to file Form CA-7 to claim compensation for wage loss during the period from July 25 to September 7, 1999. There is, however, no evidence in the case record that appellant submitted such a form claiming compensation for this period.

The decisions of the Office of Workers' Compensation Programs dated March 1, 2000 and December 1, 1999 are affirmed.

Dated, Washington, DC
May 29, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁵ *Robert E. Kimzey*, 40 ECAB 762 (1989).