

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA L. HARRISON and DEPARTMENT OF THE AIR FORCE,
TINKER AIR FORCE BASE, OK

*Docket No. 01-150; Submitted on the Record;
Issued September 27, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On July 30, 1999 appellant, then a 51-year-old software management specialist, filed a Form CA-1, federal employee's notice of traumatic injury and claim for continuation of pay/compensation. She stated that she injured her right shoulder and arm on June 14, 1999 while in the performance of duty. She stopped work on June 15, 1999 and claimed medical treatment and continuation of pay. The Office of Workers' Compensation Programs accepted her claim for right shoulder sprain and paid compensation for temporary total disability on the periodic rolls.

In a decision dated August 20, 1999, the Office denied appellant's claim for continuation of pay. The Office found that appellant failed to give written notice of injury within 30 days of the date of injury.

On August 31, 1999 appellant requested a review of the written record by an Office hearing representative. In support thereof she submitted an AFMC Form 12, record of injury/illness and treatment. Appellant's immediate supervisor signed the form on July 5, 1999, within 30 days of the June 14, 1999 employment injury. The form, which appellant also signed, provided written notice of the following: appellant's name and address; the year, month, day and hour when -- and the particular locality where -- the injury occurred; and the cause and nature of the injury.

In a decision dated January 20, 2000, the hearing representative affirmed the denial of appellant's claim for continuation of pay. The hearing representative found that appellant's argument related to the timely filing of a claim within three years and had no bearing on the issue of continuation of pay.

On May 16, 2000 appellant requested reconsideration. She argued that she was being held accountable for mistakes made by the employing establishment.

In a decision dated August 24, 2000, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. The Office found that appellant failed to provide written notice of injury on a Department of Labor form until July 30, 1999, almost 45 days following the traumatic injury of June 14, 1999, and therefore failed to file a timely notice of injury.

The Board finds that appellant is not entitled to continuation of pay.

Section 8118(a) of the Federal Employees' Compensation Act,¹ entitled "continuation of pay; election to use annual leave or sick leave," provides as follows:

"The United States shall authorize the continuation of pay of an employee, as defined in section 8101(1) of this title (other than those referred to in clause (B) or (E)), 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."

The AFMC Form 12 that appellant's supervisor signed on July 5, 1999 is not a claim for a period of wage loss and is not a form approved by the Secretary of Labor for the purpose of claiming compensation. The earliest such claim that appellant filed was the Form CA-1 she signed on July 30, 1999. Because she did not file this claim within 30 days -- the time specified in section 8122(a)(2)² -- she is not entitled to continuation of pay.

Appellant argues that her AFMC Form 12 satisfies all the statutory requirements of section 8119, entitled "notice of injury or death," and that her immediate supervisor had sufficient written notice of injury within 30 days of the June 14, 1999 employment injury. She is correct. There is a critical distinction, however, between notice of injury and a claim for compensation.

Section 8122 of the Act, entitled "Time for making claim," provides that original claims for compensation for disability or death must be filed within 3 years after the injury or death unless the immediate superior had actual knowledge of the injury or death within 30 days or written notice of injury or death, as specified in section 8119, was given within 30 days. Actual knowledge and written notice of injury under section 8119 thereby serve to satisfy the statutory period for filing an original claim for compensation. This is not an issue in appellant's case because she filed her claim for compensation approximately 46 days after the injury. The Office accepted the claim as timely and paid compensation. Had appellant waited more than three years to file her claim for compensation, the AFMC Form 12 would be relevant to whether her claim was timely under section 8122.

Claims that are timely under section 8122 are not necessarily timely under section 8118(a). Section 8118(a) makes continuation of pay contingent on the filing of a claim within 30

¹ 5 U.S.C. § 8118(a).

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

days of the injury.³ When an injured employee makes no claim for a period of wage loss within 30 days, she is not entitled to continuation of pay, notwithstanding prompt notice of injury. Appellant's AFMC Form 12 is not a claim for a period of wage loss and is not a form approved by the Secretary of Labor for purposes of claiming compensation. It provided notice of injury but is irrelevant to whether appellant is entitled to continuation of pay under 8118(a).

In the case of *William E. Ostertag*,⁴ the Board explained that the "exceptional circumstances" provision of section 8122(d)(3), which may excuse the untimely filing of a claim for compensation under section 8122(a) and (b), is not applicable to section 8118(a). Because the Act makes no proviso for the time limitation in section 8118(a), no exceptional or mitigating circumstance, including error by the employing establishment, can entitle a claimant to continuation of pay who has not filed a claim within 30 days of the injury.

The August 24, 2000 and January 20, 2000 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
September 27, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

³ The Office's August 20, 1999 and August 24, 2000 decisions misleadingly denied continuation of pay for failure to provide "notice of injury" within 30 days. The Office should have worded its decisions more carefully to deny continuation of pay for failure to file a "claim" within 30 days. Any resulting confusion by appellant is understandable.

⁴ 33 ECAB 1925 (1982).