

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRYSTAL McINTYRE and U.S. POSTAL SERVICE,
POST OFFICE, Lawrenceville, NJ

*Docket No. 02-1216; Submitted on the Record;
Issued December 6, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant was not entitled to continuation of pay because she failed to provide written notice within the applicable time limitations of the Federal Employees' Compensation Act.

On March 7, 2001 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). On the claim form appellant indicated that the date of injury was December 19, 2000; appellant reported that she lifted a box and injured her left shoulder. The supervisor's report on the reverse of the form indicates that notice of injury was received on January 25, 2001. In a narrative statement, a supervisor indicated that on January 25, 2001 she received verbal notification that appellant claimed to have left shoulder injury at work. Appellant stopped working on January 25, 2001. The Office accepted the claim for a left shoulder strain.

In a decision dated April 24, 2001, the Office determined that appellant was not entitled to continuation of pay (COP) because she did not submit her claim form within 30 days of the injury.

On October 22, 2001 a hearing was held before an Office hearing representative. At the hearing, appellant stated that on January 11, 2001 she had telephoned the employing establishment's injury compensation office and discussed the December 19, 2000 employment injury. According to appellant, she advised a Mr. Brown at the injury compensation office that the earliest convenient medical appointment was January 25, 2001, and she was told that after receiving the medical reports they would decide whether it was a new injury or a recurrence of disability. Appellant further stated she completed a CA-1 on January 25, 2001, and submitted a copy of the claim form.

By decision dated January 24, 2002, the hearing representative affirmed the April 24, 2001 Office decision.

The Board finds that the Office properly denied continuation of pay in this case.

Section 8118 of the Act provides for continuation of pay to an employee “who has filed a claim for a period of wage loss due to a traumatic injury with his immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.”¹ Section 8122(a)(2) provides that a timely claim is filed if “written notice of injury or death as specified in section 8119 of this title was given within 30 days.”² Section 8119 provides in pertinent part:

“A notice of injury or death shall --

“(a) be given within 30 days after the injury or death;

“(b) be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed;

“(c) be in writing;

“(d) state the name and address of the employee;

“(e) state the year, month, day, hour when and the particular locality where the injury or death occurred;

“(f) state the cause and nature of the injury, or, in the case of death, the employment factors believed to be the cause; and

“(g) be signed by and contain the address of the individual giving the notice.”

In this case, the date of injury was December 19, 2000. Appellant has alleged that she notified the employing establishment of the injury within 30 days, but the issue in this case is whether she provided written notice of injury in accord with section 8119. As noted by the hearing representative, oral notification is not sufficient to satisfy the requirements of the law.³

Appellant indicated that on January 25, 2001 she filed written notice of injury with her supervisor. There is no probative evidence that appellant submitted any written notice of injury containing the elements enumerated in section 8119 prior to January 25, 2001. The reasons for the delay in filing written notice are not an issue in the case; the Board has clearly stated that there is “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.”⁴

¹ 5 U.S.C. § 8118.

² 5 U.S.C. § 8122(a)(2).

³ *Russell P. Chambers*, 32 ECAB 550 (1981).

⁴ *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

The written notice of injury on January 25, 2001 was more than 30 days after the December 19, 2000 injury. The Board finds that appellant is not entitled to continuation of pay under section 8118 of the Act because she did not file a claim within the time specified in section 8122(a)(2).

The decisions of the Office of Workers' Compensation Programs dated January 24, 2002 and April 24, 2001 are affirmed.

Dated, Washington, DC
December 6, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member