

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCISCO RIVERA and U.S. CUSTOMS SERVICE,  
OFFICE OF INVESTIGATIONS, Old San Juan, PR

*Docket No. 01-1618; Submitted on the Record;  
Issued March 19, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
WILLIE T.C. THOMAS

The issue is whether appellant timely filed a claim for continuation of pay.

The Board has duly reviewed the record and concludes that appellant's claim for continuation of pay was not timely filed.

Section 8118 of the Federal Employees' Compensation Act<sup>1</sup> 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)<sup>2</sup> of this title" This latter section provides that "written notice of injury" shall be given within 30 days.<sup>3</sup> While a specific form is not required for filing of written notice, it is necessary that a filing contain words of claim or words which could be so construed.<sup>4</sup>

In this case, on February 22, 2001 appellant filed a Form CA-1 "notice of traumatic injury" alleging that on December 18, 2000 he sustained a low back injury in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for lumbar muscle spasm and bulging disc at L5-S1. By decision dated May 15, 2001, the Office denied appellant's claim for continuation of pay benefits on the grounds that his notice of traumatic injury was not timely filed. Appellant concedes that his claim for continuation of pay was not timely filed, but contends that the requirement should be waived because he was not immediately aware of the gravity of the injury.

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<sup>1</sup> 5 U.S.C. § 8118.

<sup>2</sup> 5 U.S.C. § 8122(a)(2).

<sup>3</sup> 20 C.F.R. § 10.205 of the implementing regulations provides that, in order to be eligible for continuation of pay, an employee must file a Form CA-1 within 30 days of the date of the injury.

<sup>4</sup> *Karen J. Mueller*, 48 ECAB138 (1996); *Myra Lenburg*, 36 ECAB 487 (1985).

The Board finds that appellant did not timely file a claim for continuation of pay.

In this case, it is uncontested that appellant's employment injury occurred on December 18, 2000 and that he did not file a Form CA-1 claim for continuation of pay until February 22, 2001. Thus, the Office properly found in its May 15, 2001 decision that appellant was not entitled to continuation of pay for the period December 18, 2000 through January 31, 2001. As the Office noted, however, the denial of continuation of pay does not affect his entitlement to other compensation benefits. Appellant may still claim compensation for wage loss resulting from the December 18, 2000 injury by filing a Form CA-7.

The decision of the Office of Workers' Compensation Programs dated May 15, 2001 is hereby affirmed.

Dated, Washington, DC  
March 19, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Willie T.C. Thomas  
Alternate Member