

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LANDRETH D. HAMIL and U.S. POSTAL SERVICE,
POST OFFICE, Coos Bay, OR.

*Docket No. 02-943; Submitted on the Record;
Issued September 5, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice of his injury within the time specified by the Federal Employee's Compensation Act.

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice of his injury within the time specified by the Act.

Section 8118(a) of the Act 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."¹ Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."² The context of section 8122 makes clear that this means within 30 days of the date of the injury.³

The document in the case record that serves as a claim for continuation of pay is a Form CA-1 filed on August 30, 2001. As this claim was filed more than 30 days after appellant's injury on June 22, 2001, her claim for continuation of pay is barred by statute.

With respect to the circumstances that appellant maintains prevented her from filing her claim within 30 days of his injury, the Board has held that section 8122(d)(3) of the Act,⁴ which allows the Office to excuse failure to comply with the time limitation provisions for filing a

¹ 5 U.S.C. § 8118(a).

² 5 U.S.C. § 8122(a)(2).

³ *Robert E. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁴ 5 U.S.C. § 8122(d)(3).

claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay.⁵ There is no provision under the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the date of injury.⁶ It is irrelevant, therefore, whether appellant’s supervisor failed to inform her of the proper procedures for filing her claim. Further, oral notification to the employing establishment is not sufficient to constitute notice of injury for continuation of pay purposes within the requirements of section 8118.⁷

This decision does not preclude appellant from receiving compensation, as distinguished from continuation of pay, for any disability resulting from the June 22, 2001 injury. Continuation of pay is different from compensation for disability.⁸ Continuation of pay, for the purposes of section 8118(a) of the Act, is the employee’s “pay,” while “compensation” is the money allowance or other benefit paid to an employee for a work-related disability under the Employees’ Compensation Fund. Although appellant is barred from receiving continuation of pay, she may be entitled to compensation benefits under the Act provided appropriate medical documentation is provided to the Office. The Board notes that the Office, in its letter to appellant dated April 2, 2002, advised appellant to resubmit her CA-7 form to further clarify periods of disability.

⁵ *William E. Ostertag*, 33 ECAB 1925, 1935-36 (1982).

⁶ *Teresa Samilton*, 40 ECAB 955, 956 (1989).

⁷ *Nicholas A. Dalo*, 39 ECAB 506, 508 (1988).

⁸ *See William E. Ostertag*, *supra* note 7.

For these reasons the decision by the Office of Workers' Compensation Programs dated November 7, 2001 is hereby affirmed.

Dated, Washington, DC
September 5, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member