

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHERYL A. TABORSKI and DEPARTMENT OF COMMERCE,  
BUREAU OF THE CENSUS, Omaha, NE

*Docket No. 02-1379; Submitted on the Record;  
Issued September 25, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay; and (2) whether the Office properly denied appellant's request for a hearing.

On June 9, 2000 appellant, a 53-year-old enumerator, was involved in an employment-related motor vehicle accident. She allegedly sustained injuries to her neck, shoulders, lower back and right knee. Appellant ceased work the day of her injury and returned to work on June 26, 2000. The Office accepted appellant's claim for lumbar sprain.

In a decision dated November 29, 2001, the Office determined that appellant was not entitled to continuation of pay for the period June 10 through 26, 2000. The Office explained that continuation of pay was not authorized because of appellant's failure to report her injury on an approved form within 30 days of the date of injury.

On January 8, 2002 appellant requested a hearing regarding the denial of continuation of pay. By decision dated February 8, 2002, the Office denied appellant's request as untimely. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issues could equally well be addressed through the reconsideration process.

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

Section 8118 of the Federal Employees' Compensation Act provides for the "continuation of pay of 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 the Act.<sup>1</sup> This latter section, in conjunction

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<sup>1</sup> 5 U.S.C. § 8118.

with section 8119 of the Act, provides that “written notice of injury” shall be given within 30 days after the injury.<sup>2</sup> Additionally, the implementing regulations provide that in order to be eligible for continuation of pay a person must file “Form CA-1 within 30 days of the date of the injury.”<sup>3</sup>

The record establishes that appellant filed her Form CA-1 on August 22, 2000, for a traumatic injury that occurred on June 9, 2000.<sup>4</sup> Appellant stated that she reported her injury on June 9, 2000 and requested the necessary forms to submit. Her supervisor purportedly was too busy at that time to gather the necessary paperwork and, therefore, he advised appellant that he would send the forms to her. Appellant stated that she did not receive the forms as promised and consequently, she again requested the necessary forms on July 5, 2000. Appellant further indicated that she completed the forms and hand-delivered them on July 5, 2000, but somehow they were lost.

There is nothing in the record to corroborate appellant’s allegation that she initially filed her claim on July 5, 2000. The Act and implementing regulation are specific as to the timeframe for filing a claim for continuation of pay. As appellant did not file her Form CA-1 within 30 days of her date of injury, she is not entitled to continuation of pay. However, as the Office correctly explained in its November 29, 2001 decision, the denial of continuation of pay does not preclude appellant from receiving compensation for any disability she may have sustained as a consequence of her June 9, 2000 employment injury.<sup>5</sup>

The Board further finds that the Office properly denied appellant’s request for a hearing.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>6</sup> However, the Office has discretion to grant or deny a request that was made after this 30-day period.<sup>7</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>8</sup>

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<sup>2</sup> 5 U.S.C. §§ 8119(a), 8122(a)(2).

<sup>3</sup> 20 C.F.R. § 10.205(a)(2) (1999).

<sup>4</sup> While appellant signed and dated the Form CA-1 on July 28, 2000, the employing establishment acknowledged receipt of the claim form on August 22, 2000.

<sup>5</sup> *Myra Lenburg*, 36 ECAB 487, 489 (1985).

<sup>6</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>7</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>8</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

Appellant's request for a hearing is dated January 8, 2002, which is more than 30 days after the Office's November 29, 2001 decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she timely filed her claim for continuation of pay could equally well be addressed by requesting reconsideration.<sup>9</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for review of the written record.

The February 8, 2002 and November 29, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 25, 2002

Michael J. Walsh  
Chairman

Colleen Duffy Kiko  
Member

Michael E. Groom  
Alternate Member

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<sup>9</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g.*, *Jeff Micono*, 39 ECAB 617 (1988).