

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GWEN COHEN-WISE and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Van Nuys, CA

*Docket No. 03-1021; Submitted on the Record;  
Issued July 23, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant is entitled to continuation of pay for her absence from work from June 21 to August 4, 2002.

On July 22, 2002 appellant, then a 45-year-old internal revenue auditor, filed a traumatic injury claim alleging that on June 20, 2002 her lower back became severely inflamed with possible disc damage due to carrying heavy items at work. On the reverse side of the claim form, the employing establishment indicated that appellant gave notice of the injury on July 22, 2002. Appellant's supervisor noted that he faxed appellant a CA-1 claim form on July 12, 2002. Appellant's supervisor filed an accident report (Form 9154) on July 12, 2002 indicating "severe back pain" and appellant submitted various medical records dated from July 2002 through March 2003 in support of her claim.<sup>1</sup>

By letter dated July 22, 2002, appellant stated: "Since my injury is work related, I elect to receive COP; enclosed is the CA-1 hard copy you requested; I completed this form as quickly as possible; it would have been appropriate if I had received this form when I requested it on Sunday, June 23, 2002." By letter dated August 2, 2002, she stated: "Delay occurred based on inability to obtain forms from the manager or the secretary, nor was I given any assistance to obtaining forms on the web and because it's been so difficult to think clearly because of pain and required medications.<sup>2</sup> After union intervention, my manager did send the forms." When asked why she did not report her injury to her supervisor in writing within 30 days appellant replied: "My injury was reported by phone and in writing as manager completed Form 9154." The record indicates that appellant telephoned her supervisor on July 9, 2002 and he completed Form 9154 on July 12, 2002.

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<sup>1</sup> Appellant also filed an occupational disease claim, which was denied on January 28, 2003 as well as several claims for compensation (Form CA-7) dated from November 2002 through March 2003.

<sup>2</sup> A co-worker claimed that appellant was told that she could only file the claim electronically and had to go to the website for information.

By decision dated February 11, 2003, the Office of Workers' Compensation Programs accepted that appellant sustained a lumbar strain in the performance of duty on June 20, 2002. In a separate decision dated the same day, the Office informed appellant that she was not entitled to continuation of pay (COP) during her absence from work because she had not filed her Form CA-1 within 30 days of the injury. Appellant was advised that this decision only affected her entitlement to COP benefits.

The Board finds that appellant is entitled to continuation of pay for her absence from work from June 21 to August 4, 2002.

Section 8118<sup>3</sup> of the Federal Employees' Compensation Act<sup>4</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 traumatic injury with her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title." Section 8122(a)(2)<sup>5</sup> provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.<sup>6</sup>

FECA Program Memorandum No. 250, dated January 29, 1979, states "time limitations begin to run and end at the close of business. Where the expiration occurs on a nonbusiness day, it is extended to include the next business day."<sup>7</sup>

In the instant case, the 30-day period in which appellant had to file her notice of injury would have ended on July 20, 2002. However, since that date was a Saturday, the time for filing a notice of injury did not expire until the next business day which was Monday, July 22, 2002. The Board finds that appellant's notice of injury filed on July 22, 2002 was timely filed. Therefore, she is entitled to continuation of pay for her absence from work from June 21 to August 4, 2002.

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<sup>3</sup> 5 U.S.C. § 8118.

<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> 5 U.S.C. § 8122(a)(2).

<sup>6</sup> 5 U.S.C. § 8119(a), (c).

<sup>7</sup> *Robert E. Kennedy*, 20 ECAB 349 (1969); *see also Marguerite J. Dvorak*, 33 ECAB 1682 (1982).

The decision of the Office of Workers' Compensation Programs dated February 11, 2003 is hereby reversed and the case is remanded to the Office for payment of continuation of pay.

Dated, Washington, DC  
July 23, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member