

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS J. MARNOCHA and U.S. POSTAL SERVICE,  
POST OFFICE, South Bend, IN

*Docket No. 03-665; Submitted on the Record;  
Issued May 16, 2003*

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DECISION and ORDER

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

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

On August 14, 2002 appellant, then a 49-year-old manual clerk, filed a claim for a traumatic injury occurring on April 23, 2002 in the performance of duty. Appellant stopped work on April 23, 2002 and returned to work on July 23, 2002.

By letter dated August 15, 2002, the employing establishment controverted appellant's claim on the grounds that he had stopped work on April 23, 2002 but did not report a claim until August 14, 2002.

In a decision dated September 27, 2002, the Office denied appellant's claim on the grounds that he did not establish that he sustained an injury causally related to his employment. On November 24, 2002 appellant requested reconsideration of his claim. By decision dated December 19, 2002, the Office vacated its September 27, 2002 decision and accepted appellant's claim for mechanical lower back pain with radiculopathy.

In another decision dated December 19, 2002, the Office denied appellant's claim for continuation of pay on the grounds that he did not provide written notice of his claim within 30 days.

The Board finds that appellant's claim for continuation of pay is barred by the time limitations of the Act.

Section 8118 of the 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 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.”<sup>2</sup> The latter section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury.<sup>3</sup>

In this case, appellant filed his notice of injury on August 14, 2002, more than 30 days after his April 23, 2002 employment injury. Appellant argued on appeal that he did not request continuation of pay because he was not aware of its existence. However, the responsibility for filing a claim rests with the injured employee.<sup>4</sup> Section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions for filing a claim for compensation because of “exceptional circumstances” is not applicable to section 8118(a)<sup>5</sup> which sets forth the filing requirements for continuation of pay.<sup>6</sup> There is, therefore, no provision within the Act excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury. Thus, since appellant did not file his claim within 30 days of his April 23, 2002 employment injury, he is not entitled to continuation of pay.

Even though appellant is not entitled to continuation of pay, his claim was timely and therefore he is eligible for consideration of other compensation benefits under other provisions of the Act. The Office informed appellant of his possible entitlement to these benefits in its decision dated December 19, 2002.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8118.

<sup>3</sup> See *George A. Harrell*, 29 ECAB 338 (1978).

<sup>4</sup> See *Catherine Budd*, 33 ECAB 1011 (1982).

<sup>5</sup> 5 U.S.C. § 8118(a).

<sup>6</sup> 5 U.S.C. § 8122(d)(3); see also *Dodge Osborne*, 44 ECAB 849 (1993).

The decision of the Office of Workers' Compensation Programs dated December 19, 2002 is affirmed.

Dated, Washington, DC  
May 16, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member