

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANTHONY W. HARRISON and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

Docket No. 03-785; Submitted on the Record;
Issued May 28, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
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 Employees' Compensation Act.¹

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."² Section 8122(a)(2) provides that written notice of the injury shall be given "within 30 days."³ The context of section 8122 makes clear that this means within 30 days of the date of the injury.⁴

By letter dated June 14, 2002, the employing establishment informed appellant, then a 52-year-old letter carrier, that it had contacted him on May 28, 2002 to request that he submit a CA-1 claim form regarding his alleged April 24, 2002 work-related injury. The employing establishment further advised appellant that it had a claim form that was signed by his supervisor and that a new Form CA-1 had been mailed to him *via* certified mail. It further advised him that "continuation of pay may be refused if the injury was not reported on Form CA-1 within 30 days following the injury," and that since he was received unauthorized continuation of pay at that time, it must be charged to either sick leave, annual leave or leave-without-pay. On that same day, June 14, 2002, the Office received appellant's signed CA-1, claim for traumatic injury, in which he alleged that he injured his back in the performance of duty on April 24, 2002.

¹ 5 U.S.C. § 8101.

² *Id.* at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *Robert E. Kimzey*, 40 ECAB 762 (1989); *Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

On June 18, 2002 the employing establishment controverted appellant's April 24, 2002 claim, stating that it contacted appellant several times "regarding not receiving a signed claim form; however, we did not receive a CA-1 until he completed and signed it on June 14, 2002." By letter dated July 16, 2002, the Office advised appellant to explain fully his telephonic discussion with the employing establishment in which he stated that he submitted a completed claim form to his supervisor on April 26, 2002.

In a response dated July 22, 2002, appellant stated that he reported the accident to his supervisor within 48 hours of the injury and that he completed a form that his supervisor gave him which he thought was the CA-1 claim form. He stated: "The supervisor never contacted me to tell me differently and [that they had] filed Form CA-1 and signed it on their own. I did n[o]t know about it."

By letter dated August 16, 2002, the Office accepted that appellant sustained work-related low back pain on April 24, 2002, but denied his continuation of pay on the grounds that his CA-1 claim form was submitted more than 30 days from the date of the injury. On August 19, 2002 the Office issued a decision solely on appellant's continuation of pay entitlement, noting that it was denied based on an untimely filing.

By letter dated September 22, 2002, appellant requested reconsideration and, in support of his request, submitted a September 19, 2002 letter from Jewel T. Middleton, Jr., his supervisor at the time of the injury, who stated:

"To my recollection, on April 24, 2002, between 11:30 a.m. and 12:00 p.m., I personally drove out to [appellant] on route 2017 and gave him a CA-17, CA-16 and a CA-1 to complete. He then turn (sic) each of these completed forms in to me. I then sent those forms to the appropriate [employing establishment]."

By decision dated October 31, 2002, the Office denied modification of its prior decision.

The Board finds that appellant submitted positive evidence to support that he filed his claim within 30 days of his work-related injury.

The issue in this case is whether appellant signed and submitted a CA-1 claim for traumatic injury within 30 days of his April 24, 2002 work-related injury. Appellant's supervisor related, to the best of his recollection, that he brought a CA-1, claim for traumatic injury, a CA-16, authorization for examination and treatment, and a CA-17, duty status report, to appellant on April 24, 2002 and that appellant completed them and returned them to him. The record includes a CA-16 which notes the date of injury as April 24, 2002, lists Dr. John Lee Farr, Board-certified in internal medicine, and Glendale Health Clinic as the authorized physician and medical facility, includes the supervisor's signature on April 29, 2002 and Dr. Farr's signature on May 6, 2002. Dr. Farr also signed a CA-17 on May 6, 2002. These two signed claim forms are consistent with appellant's supervisor's statements that appellant completed a CA-1 claim form at the same time he completed the CA-16 and CA-17 forms and returned them to his supervisor.⁵ The signed

⁵ Although neither the CA-16 nor CA-17 forms requires claimant's signature, appellant's printed name as noted on the forms is similar to his signature on the June 14, 2002 CA-1.

forms also support appellant's contention that he thought he completed a Form CA-1 on or about April 26, 2002.

In the case of *Albert A. Borda*,⁶ the Board found that appellant had filed a timely claim for continuation of pay based on the positive evidence presented by appellant, in the form of a receipt of a notice of injury, which was signed and dated by appellant and his supervisor. The Board found that this evidence was the "best evidence that a timely claim for continuation of pay was filed."⁷

Similarly, in the case of *Bobby W. Anderson*,⁸ the Board found that the weight of the evidence of record established that appellant filed a written claim within 30 days of the date of injury, which was subsequently lost. As the basis for this holding, the Board found that the positive evidence of record, represented by appellant's immediate supervisor and the station manager who verified in writing that they were apprised of the timely completion and filing of the initial claim form by another supervisor, outweighed any negative evidence that such was not the case.

In both the *Borda* and *Anderson* cases, the Board stated negative evidence, that is evidence that a fact did not exist, or as in this case, that a thing was not done (timely filing of a claim for continuation of pay) has probative value and in the absence of opposing evidence, and if not inherently defective, is usually regarded as of sufficient probative force; but there is a long recognized general rule of evidence that, all other things being equal, positive evidence is stronger than negative evidence.⁹

The only document in this case record which constitutes a claim is the Form CA-1, federal employee's notice of traumatic injury and claim for continuation of pay/compensation, which was not filed by appellant until June 14, 2002. As this was more than 30 days after the April 24, 2002 injury, the Office denied appellant's claim for continuation of pay.

However, the Board notes that, similar to the *Borda* and *Anderson* cases, there is positive evidence that a claim for continuation of pay was timely filed. Mr. Middleton, appellant's supervisor, stated that, to the best of his recollection, he provided a Form CA-1 to appellant on April 24, 2002, who then completed them and returned them to Mr. Middleton. The record includes a CA-16 duty status report completed by appellant and signed by Mr. Middleton on April 29, 2002, and includes Dr. Farr's report that he examined appellant no later than April 29, 2002. Dr. Farr signed the report on May 6, 2002. The record also includes a Form CA-17, duty status report, which notes Dr. Farr's examinations on April 29 and May 6, 2002, and is signed by Dr. Farr on May 6, 2002. These signed reports support Mr. Middleton's statement that he was a witness to appellant's timely completion and submission of the initial CA-1 claim form on or about April 26, 2002, and as such constitute positive evidence sufficient

⁶ 38 ECAB 111 (1986).

⁷ *Id.* at 117.

⁸ 41 ECAB 833 (1990).

⁹ See *Albert A. Borda*, *supra* note 6 at 117; see also *Bobby W. Anderson*, *supra* note 8 at 837.

to outweigh the negative evidence that appellant had not filed a claim for traumatic injury within 30 days of the injury.

The Board finds that, as there is positive evidence which would tend to establish that appellant filed a timely claim for continuation of pay, the Office improperly denied his claim for continuation of pay as untimely filed.

The decisions of the Office of Workers' Compensation Programs dated October 31 and August 19, 2002 are reversed.

Dated, Washington, DC
May 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member