

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY H. AARON and TRANSPORTATION SECURITY
ADMINISTRATION, O'HARE INTERNATIONAL AIRPORT, Chicago, IL

*Docket No. 03-1837; Submitted on the Record;
Issued November 3, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant is entitled to continuation of pay for any lost time from work due to the November 25, 2002 employment injury.

Appellant filed his claim for a traumatic injury on January 9, 2003. He indicated that the date of injury was November 25, 2002. The Office of Workers' Compensation Programs accepted appellant's claim for a herniated disc at L4-5 and authorized physical therapy from November 25, 2002 to March 25, 2003. The Office also authorized a magnetic resonance imaging scan and an orthopedic and neurological referral.

In a disability note dated December 10, 2002, appellant's treating physician, Dr. Martin G. Siglin, a Board-certified internist, stated that appellant should not be lifting, bending or twisting due to a back injury and that he expected the injury to take several weeks to heal. A handwritten note next to it stated, "1st Notice (written) to supervisor M. Winkle." In a disability note dated January 2, 2003, Dr. Siglin stated that appellant was unable to continue his current duties which required standing, bending and lifting, and that he needed light duty where he could sit. Dr. Siglin stated that he expected appellant to require light duty for at least two to three weeks.

In a statement dated May 17, 2003, appellant stated that he did not miss any work other than using three or four days for sick leave due to the November 25, 2002 injury, but the back pain worsened and he switched to light duty.

By decision dated June 10, 2003, the Office determined that appellant was not entitled to continuation of pay during his absence from work because the injury was not reported on a form approved by the Office within 30 days following the injury.

The Board finds that appellant is not entitled to continuation of pay for lost time due to the November 25, 2002 employment injury.

Section 8118¹ of the Federal Employees' Compensation Act² 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." Section 8122(a)(2)³ 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.⁴

Section 20 C.F.R. § 10.205 provides in pertinent part that to be eligible for continuation of pay, a person must: "(1) [h]ave a traumatic injury which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment; (2) [f]ile Form CA-1 within 30 days of the date of the injury; and (3) [b]egin losing time from work due to the traumatic injury within 45 days of the injury."⁵

In this case, appellant's notice of traumatic injury, Form CA-1, was filed on January 9, 2003, approximately 45 days after he injured himself. The statutory requirement for establishing entitlement to continuation of pay is that the notice of the injury must be provided on the appropriate form within 30 days of the date of injury. Thus appellant's filing of the CA-1 is not timely regarding his entitlement to continuation of pay. Dr. Siglin's disability notes dated December 10, 2002 and January 7, 2003 do not establish the requisite notice because they are not on forms approved by the Secretary of Labor for purposes of claiming compensation,⁶ and further, the January 7, 2003 disability note exceeds the 30-day time limit. The record does not contain any evidence showing that appellant gave the requisite notice to the employing establishment within 30 days of the injury.⁷ Appellant has therefore not shown that he is entitled to continuation of pay.

¹ 5 U.S.C. § 8118.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8122(a)(2).

⁴ 5 U.S.C. § 8119(a), (c); *see Gwen Cohen-Wise*, 54 ECAB ____ (Docket No. 03-1021, issued July 23, 2003).

⁵ 20 C.F.R. § 10.205(a)(1)-(3).

⁶ *See Laura L. Harrison*, 52 ECAB 515 (2001).

⁷ *Id.*

The June 10, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 3, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member