



2003, an employing establishment's supervisor noted that she had "received the undated document on January 14, 2004." Appellant stopped work on December 9, 2003, returned to work on December 15, 2003, stopped work again on February 23, 2004 and has not returned.

The record includes physical therapy notes dated December 9, 2003. On February 24, 2004 Dr. Devina D. Grover, a Board-certified family practitioner, placed appellant on total disability from that date until a follow-up examination.<sup>1</sup> On March 2, 2004 Dr. Grover released him to return to modified work on that day. The physician also prescribed physical therapy.

On March 12, 2004 the Office advised appellant regarding the information he needed to support his claim. On March 18, 2004 Dr. Satish K. Sharma, appellant's treating physician Board-certified in internal medicine, requested authorization for a magnetic resonance imaging (MRI) scan of the spine. On March 22, 2004 Dr. Sharma noted appellant's persistent low back pain and noted normal x-rays of the lumbar and cervical spine.

On March 27, 2004 appellant filed a CA-7 claim for compensation for the period February 25 to April 15, 2004. The employing establishment noted that appellant was in a leave-without-pay status for that time period.

In a report dated December 10, 2003, received by the Office on April 7, 2004, Dr. Sharma noted that appellant sustained low back strain and muscle spasms at work on December 9, 2003 and placed him off work until December 16, 2003.

On April 8, 2004 the Office again advised appellant that he needed to submit medical evidence to support that his claim for compensation from February 25 to April 15, 2004 was causally related to his December 9, 2003 work-related injury.

In a work status form dated March 18, 2004, Dr. Sharma stated that appellant was disabled from work until the next follow-up appointment. On April 2, 2004 Dr. Sharma again placed appellant on total disability until the next follow-up appointment. In an attending physician's report received on April 19, 2004 and dated April 2, 2004, Dr. Sharma stated that appellant had pain in the low back and lower extremity and was disabled from work from December 9, 2003 until that date. In a report dated April 12, 2004, Dr. Sharma stated that appellant was under his care for back pain sustained on December 9, 2003. He diagnosed low back strain with intermittent radiculopathy in the lower extremity and muscle spasms. Dr. Sharma noted that appellant was off work due to persistent pain but that he may be able to return to work in the next three to four weeks. He stated that appellant needed additional physical therapy and authorization for an MRI scan.

On April 19, 2004 the Office notified appellant that it accepted that he sustained a lumbosacral strain on December 9, 2003. However, it found that he was not entitled to continuation of pay as he did not provide written notice within 30 days of the traumatic injury. The Office noted that the injury occurred on December 9, 2003 but that the employing

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<sup>1</sup> The doctor noted a December 7, 2003 injury.

establishment did not receive written notice of his claim for injury until January 14, 2004, more than 30 days later.

In an Office worksheet dated May 5, 2004, the Office stated that appellant was paid compensation from April 12 to May 7, 2004, but that no compensation was paid from February 25 to April 11, 2004. On May 5, 2004 the Office denied appellant's claim for wage loss for the period February 25 to April 11, 2004.

### **LEGAL PRECEDENT -- ISSUE 1**

The Federal Employees' Compensation Act,<sup>2</sup> and the implementing regulation<sup>3</sup> provide for payment of continuation of pay in certain situations. Specifically, section 8118(a)<sup>4</sup> provides for continuation of pay not to exceed 45 pays, 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) provides that written notice of injury shall be given in writing within 30 days after the injury.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

Appellant filed a traumatic injury claim, which is the appropriate form to claim continuation of pay, on January 14, 2004 for an injury occurring on December 9, 2003. Appellant's claim form includes the notation from his supervisor that she received the claim on January 14, 2004. On appeal, appellant argued that after the work-related incident, he requested forms necessary to file a claim for continuation of pay but that the employing establishment did not provide him with any forms, nor did he receive any verbal or written notice of workers' compensation benefits after his supervisor knew of the injury. He further noted that he tried to communicate with supervisor but that she failed to respond to his requests. As a result his claim was untimely filed and he was denied continuation of pay.

Appellant argues that he provided timely notice to his supervisor of his work-related injury and thus his claim for continuation of pay should be considered timely filed. Section 8118<sup>6</sup> of the Act is the relevant statute in this case as it provides for payment of continuation of pay within the time specified in section 8122(a)(2),<sup>7</sup> and provides that written notice of injury or death as specified in section 8119,<sup>8</sup> be given within 30 days. There is a clear distinction between

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. §§ 10.205; 10.220.

<sup>4</sup> 5 U.S.C. § 8118(a).

<sup>5</sup> 5 U.S.C. § 8122(a)(2).

<sup>6</sup> 5 U.S.C. § 8118.

<sup>7</sup> 5 U.S.C. § 8122(a)(2).

<sup>8</sup> 5 U.S.C. § 8119.

the filing of a claim for compensation and a claim for continuation of pay. Actual notice is an exception to the three-year filing requirement of a claim for compensation benefits but has no bearing at all on the 30-day filing requirement of continuation of pay.<sup>9</sup> The Office noted in the April 19, 2004 decision that this finding only concerned continuation of pay and would not affect his entitlement to other compensation benefits.

The Board notes that there are no provisions for an exception to the 30-day filing requirement for continuation of pay for either exceptional circumstances or lack of actual knowledge of the seriousness of the injury. As appellant filed his claim more than 30 days after the December 9, 2003 employment injury, the time limitation provisions of section 8118(a) of the Act bar his claim for continuation of pay.<sup>10</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

A claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the period of claimed disability was caused or adversely affected by the employment injury.<sup>11</sup> As part of this burden, he must submit rationalized medical opinion evidence based on a complete factual and medical background showing a causal relationship between his disability and the federal employment.<sup>12</sup> The fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>13</sup> Under the Act, the term disability is defined as the incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

In this case, appellant returned to work on December 15, 2003 following his accepted lumbosacral strain on December 9, 2003. Appellant then stopped work on February 23, 2004 and did not return to work. The medical evidence of record fails to establish that appellant was disabled due to his employment-related lumbosacral strain on or after February 25 to April 11, 2004 or that his accepted condition had worsened on or after February 25, 2004 such that total disability was warranted.

In a February 24, 2004 report, Dr. Grover placed appellant on total disability but did not provide a rationalized medical opinion establishing that the disability was related to the December 9, 2003 back injury. Dr. Grover released appellant to return to modified work on

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<sup>9</sup> *Loretta R. Celi*, 51 ECAB 560, 562-63 (2000).

<sup>10</sup> *See id.*

<sup>11</sup> *Dennis J. Balogh*, 52 ECAB 232 (2001).

<sup>12</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>13</sup> *Manuel Garcia*, 37 ECAB 767 (1986).

<sup>14</sup> *See Prince E. Wallace*, 52 ECAB 357 (2001).

March 2, 2004. In reports dated March 18 and April 2, 2004, Dr. Sharma, appellant's attending physician, stated that appellant was disabled from work as a result of the December 6, 2003 injury, but did not support his opinion with a rationalized medical opinion. In one of the April 2, 2004 reports, he noted by checking a box "yes" that appellant's lower back strain was causally related to the December 6, 2003 injury. However, when a physician's opinion supporting causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.<sup>15</sup> Dr. Sharma provided no reasoning to support his opinion on causal relationship.

Thus, the evidence does not indicate that appellant was totally disabled due to his accepted lumbosacral strain on or after February 25 to April 11, 2004. Accordingly, appellant has failed to meet his burden of proof that his injury-related condition had changed.

### **CONCLUSION**

The Board finds that appellant failed to file his claim for continuation of pay within 30 days from his date of injury and therefore is barred from receiving continuation of pay under the Act. The Board also finds that the Office properly denied appellant's claim for compensation for wage loss while in a leave without pay status from February 25 to April 11, 2004.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 5 and April 19, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 12, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>15</sup> Gary J. Watling, *supra* note 12.