

**United States Department of Labor
Employees' Compensation Appeals Board**

PHILIP B. PLATTNER, Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
PUGET SOUND HEALTH CENTER,
Seattle, WA, Employer**

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**Docket No. 05-831
Issued: June 23, 2005**

Appearances:
Philip B. Plattner, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 23, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' December 10, 2004 merit decision and July 30, 2004 decision denying appellant's claim for continuation of pay on the grounds that it was not timely filed under 5 U.S.C. § 8122. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

Appellant, a 56-year-old physician, filed a claim for benefits on May 11, 2004, alleging that he sustained an injury to his supraspinatus tendon and adhesive capsulitis in his left upper arm and left shoulder due to an improperly administered flu shot on October 29, 2003. On the

Form CA-2, appellant's supervisor contested the claim on the grounds that it was not filed within the mandated 30-day time limit.

In a June 23, 2004 statement, appellant asserted that he did not file a claim within 30 days of the alleged injury because he did not become aware of the significance of the injury until several months later. He stated that he did not realize that his progressively worsening left shoulder pain was causally related to the October 29, 2003 flu shot because it was not immediately apparent to him. Appellant asserted that it was not until his condition was so severe that he required medical attention that he became aware that it had been caused by the administration of the October 2003 flu shot.

By decision dated July 30, 2004, the Office accepted appellant's claim for adhesive capsulitis of the left shoulder, but denied benefits for continuation of pay on the grounds that appellant failed to give written notice of a traumatic injury within 30 days of the date of injury. The Office advised appellant, however, that the instant decision only affected benefits for continuation of pay, that it would not affect his entitlement to other compensation benefits, and that he could claim compensation for other wage loss during the period claimed by filing the appropriate form.

By letter dated August 27, 2004, appellant requested a review of the written record.

By decision dated December 10, 2004, an Office hearing representative affirmed the Office's July 30, 2004 decision.

LEGAL PRECEDENT

Section 8118 of the Act¹ authorizes the continuation of pay of 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 is clear that this means within 30 days of the date of the injury.³

ANALYSIS

In the present case, appellant filed his Form CA-1 claim for traumatic injury and continuation of pay on May 11, 2004. As appellant filed his claim more than 30 days after his October 29, 2003 injury, he is barred from receiving continuation of pay.

With respect to the circumstances that appellant maintains prevented him from filing his claim within 30 days of his injury, the Board has held that 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

¹ 5 U.S.C. §§ 8101 *et seq.*

² *Id.* at § 8122(a)(2).

³ *E.g., Myra Lenburg*, 36 ECAB 487 (1985). *See* 20 C.F.R. § 10.201(a)(3); *George A. Harrell*, 29 ECAB 338 (1978).

8118(a), which sets forth the filing requirements for continuation of pay.⁴ It is irrelevant, therefore, that appellant was not immediately aware of the nature or extent of his injury. Appellant filed a claim based on traumatic injury, indicating that he immediately began to experience pain on October 29, 2003 due to a work-related flu injection. There is no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the date of injury.

The Board notes that although appellant is barred from receiving continuation of pay, he is entitled to compensation benefits under the Act. The Office accepted appellant's claim on July 30, 2004 and explained that the decision denying his continuation of pay did not affect his entitlement to compensation benefits. Appellant may still claim compensation for the wage loss he sustained by filing a Form CA-3, claim for compensation due to traumatic injury or disease. Accordingly, the Board affirms the Office's July 30 and December 10, 2004 decisions.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay because he failed to give written notice of his injury within the time specified by the Act.

ORDER

IT IS HEREBY ORDERED THAT the December 10 and July 30, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: June 23, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁴ See *Dodge Osborne*, 44 ECAB 849 (1993); see *Teresa Samilton*, 40 ECAB 955 (1989); see *William E. Ostertag*, 33 ECAB 1925 (1982).