

related accident. By letter dated December 9, 2003, the Office controverted appellant's claim with regard to continuation of pay.

In response to questions propounded by the Office, appellant indicated on December 24, 2003 that his claim was not filed within 30 days because:

“I believed that if I took good care of myself, eliminating all physical exertions, my body could heal itself. After 31 days I knew I needed medical help. It did not occur to me that there were time frames for reports.”

By decision dated January 20, 2004, the Office denied appellant's claim for continuation of pay during his absence from work for the period September 30 to November 13, 2003 for the reason that the injury was not reported on a form approved by the Office within 30 days of the injury. By another decision of the same date, appellant's claim was accepted for lumbosacral strain and sciatica. On July 7, 2004 the Office also accepted appellant's claim for L4-5 herniated disc.

By letter dated September 8, 2004, appellant requested reconsideration of the continuation of pay denial. In support thereof, appellant submitted a statement by a branch head at the employing establishment indicating that appellant injured his back at work on September 29, 2003 and that complications from that injury caused him to miss a considerable amount of time from work. Appellant also submitted time analysis forms with regard to his work hours from November 14, 2003 to February 13, 2004.

By decision dated October 6, 2004, the Office found that the evidence was insufficient to modify the January 20, 2004 decision that denied continuation of pay.

LEGAL PRECEDENT

The Federal Employees' Compensation Act,¹ and the implementing regulation² provide for payment of continuation of pay in certain situations. Specifically, section 8118(a)³ provides for 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 the title.” Section 8122(a)(2) provides that written notice of injury shall be given in writing within 30 days after the injury.⁴ It is a well-settled principle of workers' compensation law that ignorance of statutory requirements will not be an excuse for noncompliance with those regulations.⁵

¹ 5 U.S.C. §§ 8101-8193.

² 20 C.F.R. §§ 10.205; 10.220.

³ 5 U.S.C. § 8118(a).

⁴ 5 U.S.C. § 8122(a).

⁵ *Robert E. Kimzey*, 40 ECAB 762 (1989); *Peter J. Nevin*, 6 ECAB 839 (1954).

In the case of *William E. Ostertag*, the Board explained that the “exceptional circumstances” provision of section 8122(d)(3), which may excuse the untimely filing of a claim for compensation under section 8122(a) and (b), is not applicable to section 8118(a). Because the Act makes no provision for the time limitation in section 8118(a), no exceptional or mitigating circumstance can entitle a claimant to continuation of pay who has not filed a claim within 30 days of the injury.⁶

ANALYSIS

Appellant filed a traumatic injury claim, the appropriate form to claim continuation of pay, on December 3, 2003 for an injury occurring on September 29, 2003. As this claim was filed more than 30 days after the September 29, 2003 employment injury, appellant’s claim for continuation of pay is barred by the time limitation provisions of section 8118(a) of the Act.

Appellant explains his delay in filing by stating that he thought that if he took good care of himself, his body would heal itself. He also indicated that he was not aware that there were time frames for reports. The Board notes that there are no provisions for exception to the 30-day filing requirement for continuation of pay for exceptional circumstances or lack of actual knowledge of the seriousness of the injury.⁷ As 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 employment injury, the Office properly denied appellant’s claim for continuation of pay.

CONCLUSION

The Board finds that appellant failed to file his claim for continuation of pay within 30 days from the date of his injury. Therefore, appellant is barred from receiving continuation of pay under the Act.

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

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 6 and January 20, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 3, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member