

By decision dated February 2, 2004, the Office accepted the claim for right knee contusion, but denied benefits for a lower back injury and a left knee injury. The Office further found that appellant was not entitled to continuation of pay, as his notice of traumatic injury was not timely filed within the 30-day period following the employment injury.

By letter dated December 30, 2004, appellant's attorney requested reconsideration of the Office's February 2, 2004 decision, asserting that appellant was also entitled to compensation for a left knee injury and lower back injury stemming from the May 30, 2003 work incident. Counsel asserted that appellant should be awarded continuation of pay due to the May 30, 2003 injury. He contended that appellant's failure to file a Form CA-1 should be excused on the grounds that the employing establishment did not provide him with the form until August 2, 2003. In a January 13, 2004 affidavit, appellant asserted that the employing establishment did not give him a Form CA-1 until August 2, 2003.

By decision dated August 22, 2005, the Office modified the February 2, 2004 decision and accepted the conditions of left knee contusion, bilateral knee sprain and lumbosacral sprain. However, it affirmed the denial of continuation of pay on the grounds that appellant failed to file a notice of his traumatic injury within 30 days of the date of injury.

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 The context of section 8122 makes clear that this means within 30 days of the date of the injury.³

The Board has held that the responsibility for filing a claim rests with the injured employee.⁴ Section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provision for filing a claim for compensation because of "exceptional circumstances," is not applicable to section 8118(a),⁵ which sets forth the filing requirements for continuation of pay.⁶ There is, therefore, no provision in the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury.⁷

¹ 5 U.S.C. §§ 8101 *et seq.*

² *Id.*; 5 U.S.C. § 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).

⁴ *See Catherine Budd*, 33 ECAB 1011 (1982).

⁵ 5 U.S.C. § 8118(a).

⁶ 5 U.S.C. § 8122(d)(3); *see also Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

⁷ *Id.*

ANALYSIS

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 8118(a), which sets forth the filing requirements for continuation of pay.⁸ 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.

It is irrelevant, therefore, whether appellant’s supervisors allegedly failed to provide him with the proper forms, or that his supervisor, manager and personnel department allegedly failed to inform him of the proper procedures.

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 February 2, 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 beginning June 1, 2003 by filing a Form CA-3, claim for compensation due to traumatic injury or disease. Accordingly, the Office’s August 22, 2005 decision is affirmed.

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.

⁸ See *Dodge Osborne*, 44 ECAB 849 (1993); see *Teresa Samilton*, 40 ECAB 955 (1989); see *William E. Ostertag*, 33 ECAB 1925 (1982).

ORDER

IT IS HEREBY ORDERED THAT the August 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board