

FACTUAL HISTORY

On June 6, 2005 appellant, then a 40-year-old veterans' service representative, filed a Form CA-1 claim for traumatic injury and an accompanying statement alleging that on May 11, 2005 he sustained an injury when a coworker shouted obscenities and threw his nameplate which struck him and broke apart on his desk. He claimed that he stopped work on June 2, 2005, but that his supervisor did not sign or process his claim form until June 10, 2005.¹ Appellant indicated that the nature of the injury was "traumatic injury/occupational illness." In an attached statement dated June 14, 2005, the employing establishment controverted appellant's claim citing 20 C.F.R. § 10.220, claiming that his disability appeared to be the result of an occupational illness because of daily pressures rather than a single workday traumatic injury.

Appellant claimed that on May 11, 2005 at approximately 2:05 p.m. Mr. Downs approached his work area shouting threats and profanity. He alleged that Mr. Downs' fists were clenched and that he had immobilized appellant's chair such that appellant could not get up. Appellant claimed that this incident made him feel threatened, raised his heart rate and gave him a headache. He claimed that the emotional stress of the May 11, 2005 incident compounded a preexisting medical condition of which he had informed his managers on January 4, 2005. Appellant stated that he tried to explain during a meeting on February 10, 2005 he was experiencing stress, anxiety, depression and a service-connected hypertension and other conditions.

The employing establishment noted that appellant stated that he had been experiencing emotional stress since January 4, 2005 due to chronic tension and stress due to what he perceived as a hostile work environment. Appellant claimed that he experienced anxiety, depression and service-connected hypertension and other conditions. The employing establishment also argued that, even if appellant's claim was accepted for a traumatic injury, continuation of pay (COP) would still not be payable under 20 C.F.R. § 10.220(c) as his claim for disability was not filed within 30 days from the date of the alleged injury. The employing establishment indicated that appellant's claimed date of injury was May 11, 2005 but his supervisor was not notified until June 10, 2005, which was 30 days after the alleged date of occurrence.

In a report dated May 25, 2004, Dr. Richard Levine, a Board-certified family practitioner, noted that he had treated appellant since November 2002 for asthma, hypertension, high cholesterol, attention deficit hyperactivity disorder, depression and anxiety. Dr. Levine indicated that appellant's blood pressure fluctuated greatly depending on how much stress he was under. These situations were identified as including people yelling at him at work or threatening him physically.

By decision dated July 1, 2005, the Office rejected appellant's claim for continuation of pay finding that the injury was not reported within 30 days of its occurrence.

¹ The Board notes that the employee's workers' compensation representative initialed receipt of the Form CA-1 on June 10, 2005.

In a July 6, 2005 report, Dr. Ellen F. Brooks, a Board-certified psychiatrist, noted that she treated appellant on June 20 and July 6, 2005 for post-traumatic stress syndrome (PTSD) as a result of a May 11, 2005 assault which occurred at work. She wrote that appellant had no past history of PTSD and opined that therefore his condition resulted from being assaulted.

On July 7, 2005 appellant requested reconsideration of the Office's July 1, 2005 decision. Also submitted to the record on July 11, 2005 were appellant's reported answers to several questions posed by the Office. As to why appellant did not report the alleged injury to the employing establishment within 30 days of its occurrence, appellant replied that he told his immediate supervisor timely but failed in his attempt to hand deliver his paperwork due to staff meetings and sessions. Appellant claimed that he had timely informed the union but that they did not report it. Appellant stated that he first sought medical treatment after his alleged May 11, 2005 injury on May 24, 2005 from Dr. Levine.

In a July 20, 2005 report from Dr. Brooks, she again stated that appellant sustained PTSD as a result of the occurrence at work, and that he had reported a past psychiatric history of depression which had been in remission prior to the incident on May 11, 2005. Dr. Brooks opined that appellant had no history of PTSD and that his condition was as a direct result of the work-related incident.

By decision dated July 26, 2005, the Office denied modification of its July 1, 2005 decision to deny continuation of pay. The Office advised that appellant had not filed his claim for injury within 30 days of occurrence and therefore was not entitled to continuation of pay.

In a decision dated July 26, 2005, the Office notified appellant that his claim had been accepted for acute reaction to situational stress, single episode.

On August 1, 2005 appellant requested reconsideration of his denial of continuation of pay.

In an August 4, 2005 letter, requesting reconsideration, appellant stated that he immediately reported the May 11, 2005 incident to management, that nobody asked him if he was disabled and, after seeing his physician at a later date, he realized that situational stress had occurred and sought treatment for this condition. Appellant noted that his first day out of work was June 2, 2005.

Appellant provided another report from Dr. Levine in which he noted a diagnosis of severe stress, anxiety and depression as a direct result of an incident that occurred at work and severe anxiety that had persisted due to the incident at work, which began May 11, 2005.

By decision dated August 25, 2005, the Office declined to reopen appellant's case for further review on its merits. It found that appellant's request neither raised substantive legal questions nor included new and relevant evidence," and was therefore insufficient to warrant review at that time.

LEGAL PRECEDENT

Section 8118 of the 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 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.” Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8119.³ Section 8119 requires, in pertinent part, that written notice of the injury shall be given to the employee’s immediate superior within 30 days after the injury.⁴

Under Title 20, Code of Federal Regulations, section 10.210(a), an employee who sustains a traumatic injury that he believes is disabling must complete and submit a Form CA-1 to the employing establishment as soon as possible, but no later than 30 days from the date the traumatic injury occurred.⁵

Section 10.220 discusses when an employer is not required to pay continuation of pay. The regulations state that an employer shall continue the regular pay of an eligible employee without a break in time for up to 45-calendar days, except when and only when no written claim was filed within 30 days from the date of injury.⁶

Further, the Federal (FECA) Procedure Manual, Part 2 -- Claims: *Continuation of Pay and Initial Payments*, Chapter 2.807.7(a) (March 2004) provides that the injured employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁷ It further provides that another Office-approved form, such as CA-2, CA-2a or CA-7 forms, which contains words of claim, can be used to satisfy timely filing requirements.

ANALYSIS

In this case, appellant sustained a traumatic injury on May 11, 2005 but did not file a claim until June 10, 2005, when it was processed by his supervisor. Appellant filed his claim on June 10, 2005, 30 days after the alleged injury. Because appellant’s claim was filed within 30 days of the date of injury, he is entitled, by regulation in a traumatic injury claim, to consideration of continuation of pay.

² 5 U.S.C. § 8118.

³ 5 U.S.C. § 8119.

⁴ 5 U.S.C. § 8119; *see also* *Laura L. Harrison*, 52 ECAB 515 (2001); *Dodge Osborne*, 44 ECAB 849 (1993).

⁵ 20 C.F.R. § 10.210(a).

⁶ 20 C.F.R. § 10.220(c).

⁷ 20 C.F.R. § 10.210(a).

CONCLUSION

The decisions of the Office under July 1 and 26, 2005 are reversed. The issue of whether the Office properly denied appellant's request for further merit review, addressed in the August 25, 2005 decision, is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 26 and 1, 2005 are reversed, and the August 25, 2005 procedural decision of the Office in its refusal to reopen the case for further review on its merits is rendered moot.

Issued: January 17, 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