

September 22, 2005. The Office accepted the claim for swelling or mass of right eye on January 4, 2006.

By decision dated March 22, 2006, the Office found that appellant was not entitled to continuation of pay, as her notice of traumatic injury was not timely filed within the 30-day period following the employment injury.

On April 6, 2006 appellant requested an oral hearing, which was held by teleconference on July 24, 2006. She testified that she was unable to submit the required CA-1 form because she was hospitalized and, therefore, unable to contact her immediate supervisor.

By decision dated September 15, 2006, the Office hearing representative affirmed the March 22, 2006 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 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 The Board has noted that 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 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

ANALYSIS

In this case, appellant’s traumatic injury occurred on September 22, 2005; however, she did not file a claim until October 28, 2005, more than 30 days later.

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. Hrynychuk*, 35 ECAB 1094 (1984).

⁷ *Id.*

Appellant contends that she was prevented from filing her claim within 30 days of her injury. As noted, 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), 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. The fact that appellant was hospitalized during the 30-day period, or that her supervisor may have failed to provide her with the proper forms or even to inform her of the proper procedures, is not sufficient under the Act to allow continuation of pay if appellant failed to file a timely claim.

The Board notes that, although appellant is barred from receiving continuation of pay, she is entitled to compensation benefits under the Act. The Office accepted appellant’s claim on January 4, 2006 and explained that the decision denying her continuation of pay did not affect her entitlement to compensation benefits. Appellant may claim wage-loss compensation by filing a Form CA-3, claim for compensation due to traumatic injury or disease. Accordingly, the Office’s March 22 and September 15, 2006 decisions are affirmed.

CONCLUSION

The Board finds that appellant’s claim for continuation of pay was properly denied because she failed to provide written notice of her injury within the time specified under 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 September 15 and March 22, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 16, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board