

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

L.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Redondo Beach, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-2157
Issued: February 20, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 2, 2007 appellant filed a timely appeal from the May 3, 2007 decision of an Office of Workers' Compensation Programs' hearing representative, which affirmed the January 18, 2007 denial of continuation of pay. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the issue of continuation of pay.

ISSUE

The issue is whether the Office properly denied appellant's claim for continuation of pay on the grounds that written notice of injury was not filed within 30 days of the date of the injury.

FACTUAL HISTORY

On October 6, 2006 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that he experienced rhabdomyolysis, renal failure and dehydration while delivering heavy mail on June 17, 2006, which was a hot day. He went to the emergency room after becoming sick to his stomach and experiencing shortness of breath and body cramps.

Appellant was off of work from June 18 to 26, 2006, when he returned to modified duties. The employing establishment controverted the claim.

By decision dated December 1, 2006, the Office accepted appellant's claim for precipitation of rhabdomyolysis, with transient renal failure resolved by September 5, 2006. The Office combined this claim with File No. 132160742, which was then closed.¹ The Office also stated that an emotional condition claim brought under File No. 132160742 was not accepted.

By decision dated January 18, 2007, the Office found that appellant was not eligible for continuation of pay because his claim had been filed more than 30 days after the date of injury. It stated that this decision did not affect his entitlement to compensation benefits.

On January 21, 2007 appellant informed the Office that he had attempted to file a CA-1 form when he was in the hospital after his June 17, 2006 employment injury. He stated that the employing establishment told him that there was no need to file a new CA-1 at that time. The employing establishment did not provide appellant a CA-1 form until he had asked for one several times. On February 1, 2007 he requested a review of the written record.

By decision dated May 3, 2007, the Office hearing representative affirmed the denial of appellant's claim for continuation of pay. He noted that the rules governing continuation of pay did not have any exceptions to the requirement that a claim must be filed within 30 days.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² and its implementing regulations provide for the continuation of pay in certain circumstances.³ Specifically, section 8118(a) 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 Act.⁴ Section 8122(a)(2) provides that written notice of injury shall be given in writing within 30 days after the injury.⁵ Section 10.210(a) of the implementing federal regulations provides in pertinent part:

“An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for continuation of pay. The employee must: (a) [c]omplete and submit Form CA-1 to the employing

¹ In File No. 132160742, filed on June 16, 2006, the Office accepted that appellant sustained employment-related heat exhaustion on May 25, 2006.

² 5 U.S.C. §§ 8101-8193.

³ 20 C.F.R. §§ 10.205, 10.220.

⁴ 5 U.S.C. § 8118(a).

⁵ 5 U.S.C. § 8122(a)(2).

[establishment] as soon as possible, but no later than 30 days from the date the traumatic injury occurred.”⁶

Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.⁷

The Board has held that the responsibility for filing a claim rests with the injured employee.⁸ The Board has also held that section 8122(d)(3) of the Act,⁹ 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),¹⁰ which sets forth the filing requirements for continuation of pay.¹¹ 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.¹²

ANALYSIS

The record establishes that appellant sustained an accepted traumatic injury on June 17, 2006. He filed a claim for continuation of pay related to this injury on October 6, 2006, more than 30 days later. Appellant contended that he did not file it sooner because the employing establishment informed him that there was no need for a new claim and made it difficult for him to obtain a CA-1 form. Even if these allegations are true, the Board notes that there are no exceptions to the requirement that a claim for continuation of pay be filed within 30 days of the date of injury. Because appellant did not file his claim for continuation of pay within 30 days of the employment injury, the Office properly denied appellant’s claim for continuation of pay.¹³

The Board notes that, although appellant is barred from receiving continuation of pay, he may still be eligible for other types of compensation benefits under the Act. On January 18, 2007 the Office explained that the decision denying his continuation of pay did not affect his entitlement to compensation benefits. Therefore, appellant may still claim wage-loss compensation benefits for disability or claim compensation for medical treatment rendered due to the effects of the employment injury.

⁶ 20 C.F.R. § 10.210(a).

⁷ *Laura L. Harrison*, 52 ECAB 515 (2001); *Sylvia P. Blackwell*, 35 ECAB 811 (1984).

⁸ See *Catherine Budd*, 33 ECAB 1011 (1982) (continuation of pay denied where employee did not timely file her claim because the employing establishment erroneously told her that her medical records and accident report were sufficient).

⁹ 5 U.S.C. § 8122(d)(3).

¹⁰ 5 U.S.C. § 8118(a).

¹¹ *Michael R. Hrynchuk*, 35 ECAB 1094 (1984).

¹² *Robert E. Kimzey*, 40 ECAB 762 (1989).

¹³ *Loretta R. Celi*, 51 ECAB 560 (2000).

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that written notice of injury was not filed within 30 days of the date of the injury.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 3 and January 18, 2007 are affirmed.

Issued: February 20, 2008
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