

injured his right wrist and two fingers when a turkey fell off the line. He signed the form but did not date the form or otherwise indicate the date that he completed the form. Paul Dougherty, appellant's supervisor, stated that the employing establishment received notice of the injury on May 1, 2006. Appellant stopped work on April 27, 2006.

The record indicates appellant first sought medical attention on May 1, 2006 from Dr. Sharon E. Martin, a Board-certified internist, who, in a May 3, 2006 report, noted that appellant was working the processing line when a 30-pound turkey fell off hook and appellant grabbed it with his right hand. She opined that appellant was totally disabled from May 1, 2006 until his next appointment of May 12, 2006. In a May 12, 2006 prescription note, Dr. Martin indicated that appellant could return to work on May 14, May 15.

In a May 30, 2006 statement, appellant advised that he completed the accident report on April 3, 2006 and gave it to Mr. Dougherty to sign. Appellant indicated that he had signed the form on the wrong line and when he returned to work on May 15, 2006, Mr. Dougherty asked him to sign the form in the appropriate area. He related that he was working the "turkey line" and a 35- to 40-pound turkey fell out of the shackle and caught his right hand, pulling on his ring finger and wrist. Appellant noted that he worked the month of April with soreness and stiffness in the third finger and right wrist, for which he took pain medication and used a wrist strap. He stated that he was unable to work with the brace Dr. Martin prescribed to stabilize his wrist and no light duty was available.

On October 26, 2006 the Office accepted appellant's claim for tendinitis of the right wrist. It advised of the type of medical evidence needed if he claimed compensation for wage loss.

By decision dated March 16, 2007, the Office denied appellant's claim for continuation of pay for the period May 1 to 14, 2006 on the grounds that his injury was not reported on a form approved by the Office within 30 days of the injury.

On April 3, 2007 appellant requested reconsideration. He submitted the first page of the March 30, 2006 traumatic injury claim form and noted in an April 3, 2007 letter that the date of injury was completed. The portion of the form reserved for the employing establishment to complete was not submitted. Appellant signed the form but did not date it. On the "date of this notice" portion of the claim form, the date March 30, 2006 was written. No other evidence was submitted.

By decision dated April 19, 2007, the Office denied appellant's request for reconsideration without further review on the merits.

LEGAL PRECEDENT -- ISSUE 1

Section 8118¹ 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 traumatic injury with

¹ 5 U.S.C. § 8118.

² *Id.* at §§ 8101-8193.

her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. Section 8122(a)(2)³ provides that written notice of injury must be given as specified in section 8119. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.⁴

The Act's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant must:

“(1) Have a ‘traumatic injury’ as defined at [section] 10.5(ee) which is job related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment;

“(2) File Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

“(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.”⁵

ANALYSIS -- ISSUE 1

The employing establishment received appellant's traumatic injury claim form for his March 30, 2006 injury on May 1, 2006. While appellant signed the claim form, there is no indication when the form was signed. The employing establishment indicated that it received notice of the injury and the claim form on May 1, 2006, more than 30 days after the March 30, 2006 injury. 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.⁶ The Board has held that the responsibility for filing a claim rests with the injured employee.⁷ While appellant alleged he completed the accident report on April 3, 2006, there is no evidence of record supporting such assertion. Because appellant did not file his CA-1 claim form within 30 days of the March 30, 2006 injury, the Board finds that he is not entitled to continuation of pay.⁸

The Board notes that, although appellant is barred from receiving continuation of pay, he may be entitled to other compensation benefits under the Act. As appellant's claim was accepted, a decision denying continuation of pay does not affect appellant's entitlement to

³ *Id.* at § 8122(a)(2).

⁴ *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁵ 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

⁶ *See Dodge Osbourne*, 44 ECAB 849 (1993); *Theresa Samilton*, 40 ECAB 955 (1989) and *William E. Ostertag*, 33 ECAB 1925 (1982).

⁷ *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).

⁸ *Loretta R. Celi*, 51 ECAB 560 (2000).

compensation benefits as he may still claim wage-loss compensation for disability or claim compensation for medical treatment rendered due to the effects of the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,⁹ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.¹⁰ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹¹

ANALYSIS -- ISSUE 2

In an April 3, 2007 letter, appellant requested reconsideration of the Office's March 16, 2007 decision which found he was not entitled to continuation of pay. The relevant issue in the case, whether appellant timely filed a written claim for continuation of pay due to his accepted employment injury for the period May 1 through 14, 2006, is factual in nature.

In his reconsideration request, appellant noted that he had completed the date-of-injury portion of the claim form. In support of his assertion, he submitted the first page of the notice of traumatic injury which claimed the March 30, 2006 injury. The employing establishment's side of the form was not submitted. This form is generally the same as the version of the form that the employing establishment received on May 1, 2006 except that this version of the form lists March 30, 2006 in the "date of notice" portion of the form. Appellant did not address the discrepancy except for asserting that the "dates were completed on the original." Submission of this partial version of the form, without further evidence to substantiate or explain the newly added date, fails to sufficiently address whether appellant filed a claim for continuation of pay within 30 days of his accepted March 30, 2006 employment injury and is thus not relevant. The Board, therefore, finds that this evidence does not require reopening appellant's claim for further review on the merits.

The evidence submitted by appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the

⁹ 5 U.S.C. § 8128(a).

¹⁰ *Id.* at § 10.606(b)(2).

¹¹ *Id.* at § 10.608(b).

Office. As he did not meet any of the necessary regulatory requirements, the Board finds that he is not entitled to further merit review.¹²

CONCLUSION

The Board finds that the Office properly denied continuation of pay for appellant as he did not file his traumatic injury claim within 30 days following the injury. The Board further finds that the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decisions dated April 19 and March 16, 2007 are affirmed.

Issued: April 22, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹² See *id.* at § 10.608(b); *Richard Yadron*, 57 ECAB 207 (2005).