

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

A.H., Appellant)	
)	
and)	Docket No. 09-589
)	Issued: August 24, 2009
)	
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE, Ogden, UT,)	
Employer)	
)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Frank M. Wells, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 31, 2008 appellant filed a timely appeal from the September 25, 2008 merit decision of the Office of Workers' Compensation Programs, denying continuation of pay. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established entitlement to continuation of pay.

FACTUAL HISTORY

On July 25, 2008 appellant, then a 35-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 24, 2008 she experienced pain in her hand. After pulling "suspenses" she was unable to type or grip anything. Appellant stopped work on June 24, 2008. The employing establishment controverted the claim contending, among other things, that it was not timely filed.

By letter dated August 4, 2008, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It addressed the medical and factual evidence she needed to submit, including why she did not provide written notice of her injury to a supervisor within 30 days of the date of injury. By letter dated September 12, 2008, the Office accepted that appellant sustained mild left carpal tunnel syndrome.

In a September 25, 2008 decision, the Office denied continuation of pay on the grounds that appellant did not report her injury on an Office-approved form within 30 days. It noted that this decision did not affect her entitlement to wage-loss compensation benefits.¹

LEGAL PRECEDENT

Section 8118 of the Act 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 her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.² Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119.³ Section 8119 provides in part that notice of injury shall be given in writing within 30 days after the injury.⁴

Claims that are timely under section 8122 are not necessarily timely under section 8118(a). Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury.⁵ When an injured employee makes no written claim for a period of wage loss within 30 days, she is not entitled to continuation of pay, notwithstanding prompt notice of injury.⁶

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 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; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁷

ANALYSIS

The Office accepted that appellant sustained left mild carpal tunnel syndrome on June 24, 2008. Appellant filed a Form CA-1 on July 25, 2008. Because the claim was not filed

¹ The Office issued decisions on April 8, June 24 and July 27, 2009 denying appellant's claims for compensation for the period February 2 through June 19, 2009. These decisions are not before the Board on the present appeal.

² 5 U.S.C. § 8118.

³ *Id.* at § 8122(a)(2).

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

⁵ *Id.* at § 8118(a).

⁶ *See Laura L. Harrison*, 52 ECAB 515 (2001).

⁷ 20 C.F.R. § 10.205(a)(1-3). *See also Carol A. Lyles*, 57 ECAB 265 (2005); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807(7) (March 2004).

within 30 days of the injury, as specified in section 8118(a) of the Act, the Board finds that she is not entitled to continuation of pay.⁸ The rationale for this holding is set forth in *William E. Ostertag*.⁹ There is no provision for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury.¹⁰

CONCLUSION

The Board finds that the Office properly denied continuation of pay on the grounds that appellant failed to give written notice of injury within the time limitation provision of the Federal Employees' Compensation Act.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2009
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

⁸ The Board notes that, although appellant is barred from receiving continuation of pay, she may be eligible for other types of compensation benefits under the Act. The Office accepted her claim on September 12, 2008. On September 25, 2008 it explained that the decision denying appellant's continuation of pay did not affect her entitlement to compensation benefits. Appellant may claim wage-loss compensation benefits for disability or claim compensation for medical treatment rendered due to the effects of the accepted employment injury.

⁹ 33 ECAB 1925, 1932 (1982).

¹⁰ See *Dodge Osborne*, 44 ECAB 849 (1993).