

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

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A.M., Appellant )  
and ) Docket No. 09-1255  
U.S. POSTAL SERVICE, EAST ATLANTA ) Issued: December 8, 2009  
STATION, Atlanta, GA, Employer )  
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)

*Appearances:*

*Appellant, pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On April 16, 2009 appellant filed a timely appeal from a February 12, 2009 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 the case.

**ISSUE**

The issue is whether appellant is entitled to continuation of pay for her November 25, 2006 employment injury.

**FACTUAL HISTORY**

On May 10, 2007 appellant, then a 47-year-old service associate, filed a traumatic injury claim (Form CA-1) alleging that on November 25, 2006 she sustained post-traumatic stress disorder after the employing establishment was robbed at gunpoint and the suspect was killed by police. Appellant filed a CA-1 traumatic injury form on May 10, 2007.

By decision dated June 26, 2007, the Office accepted appellant's claim for post-traumatic stress disorder. In a decision of the same date, it denied continuation of pay on the grounds that appellant did not file her claim form within 30 days of the employment injury.

On December 17, 2007 appellant filed a request for reconsideration. She stated that she had to use her own sick leave and annual leave to consult a physician after the incident and to testify to a grand jury about the November 25, 2006 events. Appellant contended that she previously gave her manager the claim form but was advised that the form was never received by the Office. She subsequently resubmitted the form.

By decision dated January 11, 2008, the Office denied modification of the June 26, 2007 decision on the grounds that the traumatic injury claim was not filed within 30 days of the employment injury. It recommended that she file for repurchase of her leave using Form CA-7.

On January 13, 2009 appellant filed a request for reconsideration. In a January 6, 2009 statement, she contended that she turned in a Form CA-1 to her manager, Ms. Cleveland, within the 30-day time period but that it was not received by the Office.

In a January 2, 2009 letter, Veria Bowden, a coworker, stated that appellant returned to the employing establishment about three weeks after the robbery and filled out a claim form. Appellant gave it to the acting manager, Ms. Cleveland, that day.

In a February 12, 2009 telephone memorandum, Ms. Cleveland stated that appellant did not submit a claim form to her and that none of the coworkers present could remember what happened that day.

By decision dated February 12, 2009, the Office denied modification of the prior decisions on the grounds that the submitted evidence did not establish that appellant filed her claim within 30 days of the date of injury.

#### **LEGAL PRECEDENT**

Section 8118 of the Federal Employees' Compensation Act<sup>1</sup> 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 her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.<sup>2</sup> Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119.<sup>3</sup> The latter section provides, in part, that notice of injury shall be given in writing within 30 days after the injury.<sup>4</sup>

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Id.* at § 8118.

<sup>3</sup> *Id.* at § 8122(a)(2).

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

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 claim within 30 days of the injury. When an injured employee makes no claim for a period of wage loss within 30 days, she is not entitled to continuation of pay, notwithstanding prompt notice of injury.<sup>5</sup> The Act makes no provision for exceptional or mitigating circumstances entitling a claimant to continuation of pay who has not filed a claim within 30 days of the injury.<sup>6</sup>

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.<sup>7</sup> The Act authorizes continuation of pay of an employee who has filed a valid claim for a traumatic injury.<sup>8</sup>

### **ANALYSIS**

The Office accepted that appellant sustained post-traumatic stress disorder as a result of a November 25, 2006 armed robbery. Appellant filed a traumatic injury claim (Form CA-1) on May 10, 2007. Because she did not file a claim within 30 days as specified in sections 8118(a) and 8122(a)(2) of the Act, she is not entitled to continuation of pay.<sup>9</sup>

Appellant contended that she submitted a claim form to her manager within the 30-day period but that the Office never received this form. Any prior claim form is not of record and appellant's manager at the time, Ms. Cleveland, stated that she did not receive a claim form from appellant, as alleged. Therefore, the record does not establish appellant's contention that she submitted her traumatic injury claim form within 30 days of the November 25, 2006 employment injury.<sup>10</sup>

### **CONCLUSION**

The Board finds that appellant is not entitled to continuation of pay for her November 25, 2006 employment injury.

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<sup>5</sup> *Laura L. Harrison*, 52 ECAB 515 (2001).

<sup>6</sup> *Id.*; *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>7</sup> 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

<sup>8</sup> 5 U.S.C. § 8118(a).

<sup>9</sup> *See W.W.*, 59 ECAB \_\_\_\_ (Docket No. 08-477, issued May 22, 2008).

<sup>10</sup> The Board notes that, although appellant is barred from receiving continuation of pay, she may be entitled to other benefits. The Office accepted that appellant sustained post-traumatic stress disorder. Thus, she may still claim wage-loss disability and compensation for medical treatment rendered due to the effects of the employment injury. *See P.R.*, 60 ECAB \_\_\_\_ (Docket No. 08-2239, issued June 2, 2009).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 12, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 8, 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