

In a supervisory mishap report, dated April 14, 2008, appellant's supervisor noted that appellant did not report the incident at the time it occurred.

In response to a May 14, 2008 Office letter requesting additional information, appellant submitted an April 11, 2008 statement. After the incident on February 27, 2008, she began to notice increasing left shoulder pain. Appellant sought medical treatment on March 10, 2008, when the pain became too intense to bear. She stated that she had a magnetic resonance imaging (MRI) scan on April 2, 2008, revealing an articular surface partial thickness tear. This finding was supported by an April 9, 2008 nerve test evaluation.

On May 19, 2008 appellant explained that she did not report the injury immediately because she initially believed her shoulder discomfort was due to moving heavier than usual equipment. She saw a doctor on February 29, 2008, but was told her condition was probably only arthritis related. When appellant informed her supervisor of her medical appointment, the supervisor asserted that she should have been notified when the pain began and that appellant needed to file a traumatic injury claim immediately. Appellant also submitted an April 10, 2008 e-mail where she notified her supervisor that she sustained a work-related injury.

By decision dated June 6, 2008, the Office accepted appellant's claim for left rotator cuff sprain, complete left rotator cuff rupture and adhesive capsulitis of the left shoulder. It noted that it did not accept cervicalgia. In a second decision of the same date, the Office denied continuation of pay on the grounds that appellant did not report her injury on an Office-approved form within 30 days following the injury.

LEGAL PRECEDENT

Section 8118¹ of the Federal Employees' Compensation 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 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

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

¹ 5 U.S.C. § 8118.

² *Id.* at §§ 8101-8193.

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).

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

ANALYSIS

On April 15, 2008 appellant filed a traumatic injury claim for a February 27, 2008 injury. Because she filed the claim on April 15, 2008, the Board finds that it was not filed within 30 days of the injury, as specified in the Act. Therefore, she is not entitled to continuation of pay.⁸

Appellant contends on appeal that she is entitled to compensation for her leave lost while obtaining treatment for her left shoulder condition. The Office's June 6, 2008 decision only denied continuation of pay and not wage-loss compensation or leave buy back. The Board notes that the Office accepted her claim for left rotator cuff sprain, complete left rotator cuff rupture and adhesive capsulitis of the left shoulder. As noted in the Office decision, appellant is eligible to file for other compensation benefits related to these conditions, including lost wages.⁹

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for her February 27, 2008 employment injury because she failed to timely file a claim within 30 days of the injury.

⁶ *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).

⁸ *See Dodge Osborne*, 44 ECAB 849 (1993).

⁹ *See id.* (where the Board noted that, although the employee was not entitled to continuation of pay, his claim was timely so as to make him eligible for consideration of other compensation benefits under other provisions of the Act).

ORDER

IT IS HEREBY ORDERED THAT the June 6, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 2, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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