

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

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**R.J., Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, HILL  
AIR FORCE BASE, Ogden, UT, Employer**

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**Docket No. 08-2338  
Issued: June 9, 2009**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 25, 2008 appellant timely filed an appeal from a May 21, 2008 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed a January 2, 2008 decision 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 claim.

**ISSUE**

The issue is whether appellant is entitled to continuation of pay for his May 4, 2007 employment injury.

**FACTUAL HISTORY**

On June 12, 2007 appellant, then a 59-year-old aircraft worker, filed a traumatic injury claim (Form CA-1) indicating that on May 4, 2007 he was stepping down from a work stand on an aircraft and twisted his left knee. The date of the notice was June 12, 2007 and the employee's signature date was November 30, 2007. The employing establishment received notice of the claimed injury and signed the form on June 12, 2007. After stopping work on the

date of injury, appellant returned to restricted-duty work. The Office accepted his claim for left knee sprain.

In a decision dated January 2, 2008, the Office found that appellant was not entitled to continuation of pay for his May 4, 2007 work injury on the basis that it was not properly reported within 30 days of the injury.

In a January 5, 2008 letter, appellant stated that he gave notice to his supervisor of his injury on May 14, 2007 on an Occupational Safety and Health Administration (OSHA) Form 301, injury and illness incident report, and also submitted a medical evaluation of work status form dated May 14, 2007. After he submitted these documents to his supervisor, he believed the CA-1 would be electronically filed the same week. Appellant acknowledged that his copy of the CA-1 was dated June 12, 2007 and he was not sure how this error occurred. At the time of the injury, he was not aware of the extent of his injuries and there was no one to inform in the surrounding area. Appellant believed his injury to be a simple knee twisting injury; however, over the weekend he experienced intense left knee pain and swelling and he could not stand or put weight on his left leg. He noted using one day of sick leave and then returned to work and verbally notified his supervisor of his injury.

On January 12, 2008 appellant requested a review of the written record. He submitted a copy of the OSHA Form 301 dated May 14, 2007 prepared by Dr. Christina M. Vokt, Board-certified in occupational medicine, who noted that on May 4, 2007 appellant was descending steps at work and twisted his left leg. Dr. Vokt diagnosed left knee strain and returned appellant to limited-duty work for 14 days. Also submitted was a May 14, 2007 work restriction evaluation in which she noted that appellant sustained an injury on May 4, 2007 and could return to work the same day with temporary restrictions lasting less than four weeks. Dr. Vokt indicated that appellant was entitled to continuation of pay for time missed from work. Appellant submitted May 14, 2007 treatment notes from Dr. Vokt who reiterated that on May 4, 2007 appellant was descending steps at work and twisted his left leg. Dr. Vokt diagnosed left knee sprain and overexertion and opined that appellant's condition was employment related. She returned him to work with restrictions. Other reports from Dr. Vokt and other health care providers noted appellant's status.

In a decision dated May 21, 2008, the Office hearing representative affirmed the January 2, 2008 decision. The hearing representative found that appellant did not report the injury on a form approved by the Office within 30 days of the injury.

### **LEGAL PRECEDENT**

Section 8118<sup>1</sup> of the Federal Employees' Compensation 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 his immediate supervisor on a form approved by the

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<sup>1</sup> 5 U.S.C. § 8118.

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. The latter section provides in part that notice of injury shall be given in writing within 30 days after the injury.<sup>3</sup>

Office regulations provide, in pertinent part, that to be eligible for continuation of pay, an employee 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>4</sup> The Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.<sup>5</sup>

The Office’s procedure manual provides:

“*Employee Responsibility.* The injured employee or someone acting on his or her behalf is responsible for the following:

a. *Notice of Injury.* The employee must provide a written report on Form CA-1 to the employing agency within 30 days of the injury. [The form must show whether the employee wishes to use sick or annual leave or request COP for the period of disability].”<sup>6</sup>

### ANALYSIS

On June 12, 2007 the employing establishment received a CA-1, traumatic injury claim, from appellant for a traumatic left knee injury of May 4, 2007. The employing establishment received the CA-1 from appellant approximately 38 days after the claimed injury. As this was more than 30 days after the May 4, 2007 injury, the claim for continuation of pay is barred by the applicable time limitation provisions specified in sections 8118(a) and 8122(a)(2) of the Act.<sup>7</sup>

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. When an injured employee makes no written claim for a period of wage loss within 30 days, he is not entitled to continuation of pay, notwithstanding prompt

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<sup>2</sup> Section 8122(a)(2) provides that written notice of injury must be given as specified in section 8119, which provides for a 30-day time limitation for filing a claim of a traumatic injury. 5 U.S.C. § 8119(a), (c), 8122(a)(2). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

<sup>3</sup> 5 U.S.C. § 8119(a), (c); *see Gwen Cohen-Wise*, 54 ECAB 732 (2003).

<sup>4</sup> 20 C.F.R. § 10.205(a)(1-3).

<sup>5</sup> 5 U.S.C. § 8118(a).

<sup>6</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807(7) (March 2004).

<sup>7</sup> 5 U.S.C. §§ 8101-8193.

notice of injury.<sup>8</sup> Appellant contends that he verbally notified his employer of the injury within the 30-day period and then his supervisor was to file the CA-1 electronically. Appellant believed that his supervisor would file the CA-1 electronically the same week he submitted the form. The Board has held that oral notice to the supervisor is insufficient to satisfy the requirements of 5 U.S.C. § 8118.<sup>9</sup> The Board has also held that the responsibility for timely filing of a claim rests with the injured employee.<sup>10</sup> The fact that appellant may have been unaware of the applicable time limitation is not sufficient to toll the running of the 30-day filing requirement. There is no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the date of injury.<sup>11</sup>

Appellant also asserts that he notified his employer of his injury with alternate written forms, including OSHA form 301 dated May 14, 2007 and through medical reports of May 14, 2007. However, these forms are not considered claims for a period of wage loss. The OSHA form and the medical reports do not contain any words of claim and cannot be construed to constitute a "claim" for continuation of pay, which is required by section 8118.<sup>12</sup> The first document filed by appellant which contains words of claim and which, therefore, may be construed as constituting a claim for continuation of pay under section 8118 is the CA-1 form filed on June 12, 2007, more than 30 days after the May 4, 2007 injury. Appellant further asserts on appeal that he was on medication and in severe pain which precluded him from sooner filing his claim. In the case of *William E. Ostertag*,<sup>13</sup> the Board explained that the exceptional circumstances provision of section 8122(d)(3), which may excuse the untimely filing of an original claim for compensation under section 8122(a) and (b), is not applicable to section 8118(a) which concerns a claim for continuation of pay. Because the Act makes no provision for an exception to the time limitation in section 8118(a), no exceptional or mitigating circumstance, including error by the employing establishment, can entitle a claimant to continuation of pay who has not filed a written claim within 30 days of the date of injury.<sup>14</sup>

Thus, since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, more than 30 days after May 4, 2007, his claim for continuation of pay is barred by the applicable time limitation. This decision does not affect appellant's entitlement to compensation in the form of medical benefits or wage-loss benefits.

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<sup>8</sup> *W.W.*, 59 ECAB \_\_\_\_ (Docket No. 08-477, issued May 22, 2008).

<sup>9</sup> *See Russell P. Chambers*, 32 ECAB 550 (1981).

<sup>10</sup> *Catherine Budd*, 33 ECAB 1011, 1014 (1982).

<sup>11</sup> *Robert E. Kimzey*, 40 ECAB 762 (1989).

<sup>12</sup> *See Thomas Wolff*, 31 ECAB 1901 (1980) (where the record contained a Form CA-16 authorizing medical treatment and signed by appellant's supervisor on the date of the injury, the Board found that the form did not contain any words of claim and could not be construed to constitute a "claim" for continuation of pay).

<sup>13</sup> 33 ECAB 1925 (1982).

<sup>14</sup> *Laura L. Harrison*, 52 ECAB 515 (2002).

**CONCLUSION**

The Board finds that appellant is not entitled to continuation of pay for his May 4, 2007 employment injury.<sup>15</sup>

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated May 21 and January 2, 2008 are affirmed.

Issued: June 9, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> After the May 21, 2008 decision, appellant submitted additional medical evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).