



Nancy Becker noted that, while attending a training program from December 4 to 14, 2006, appellant sustained injuries to her hands, knees and shoulder. Appellant stopped work on February 23, 2007.

A December 14, 2006 safety investigation form noted that on December 5, 2006 appellant injured her right shoulder at a firearm qualifications range and sustained multiple bruises at a training facility. She reported her injuries to her supervisor on December 14, 2006. Appellant submitted a February 21, 2007 magnetic resonance imaging (MRI) scan of the right knee, which revealed a complete Grade 3 anterior cruciate ligament tear and a small tear in the posterior horn of the medial meniscus.

By letter dated February 28, 2007, the Office advised appellant of the factual and medical evidence needed to establish her claim. It requested that she submit a physician's opinion addressing the relationship of her claimed condition and specific employment factors.

On March 5, 2007 appellant stated that she attended a two week tactical training course on December 4, 2006 that included firearm training, baton training, weapons retention and pepper spray training. On December 5, 2006 she was holding a strike pad for another participant and felt a pop and pull in her right knee. Appellant informed the instructor of her injury. She finished her portion of the training and sought first aid. On March 16, 2007 appellant reiterated the events concerning her right knee injury and noted that she filed a CA-1 form before departing from training. In January 2007, appellant sought medical attention. She indicated that on February 19, 2007 she experienced extreme pain in her knee while cooking at home and sought medical attention on February 20, 2007. Appellant noted that on March 1, 2007 she underwent arthroscopic surgery of the right knee.

Dr. Michael L. Blackwell, a Board-certified orthopedic surgeon, treated appellant on February 20, 2007 for a knee injury. Appellant reported that she twisted her knee a month prior and aggravated the injury on February 19, 2007. Dr. Blackwell noted a Grade 2 effusion and recommended an MRI scan. On February 23, 2007 he noted that appellant sustained a right knee injury at work on December 5, 2006 and diagnosed a tear of the anterior cruciate ligament and a posterior horn tear of the medial meniscus.

On April 10, 2007 the Office accepted that appellant sustained a sprain of the cruciate ligament of the right knee and derangement of the posterior horn of the right medial meniscus. It authorized the arthroscopic surgery performed on March 1, 2007.

In a decision dated April 10, 2007, the Office found that appellant was not entitled to continuation of pay from December 5, 2006 to January 19, 2007 as she did not report her injury on a form approved by the Office within 30 days.

On April 28, 2007 appellant requested an oral hearing, which was held on October 12, 2007. In a January 9, 2007 e-mail, she requested the training facility technician verify that her CA-1 form, which was filed on December 14, 2006, was processed by the Office. Appellant noted checking with the Office personnel in Texas who indicated not receiving the claim form. She believed that she would need the case number before any physician would treat her. Appellant submitted a March 1, 2007 surgical report from Dr. Blackwell, who performed a

right knee anterior cruciate ligament reconstruction and diagnosed right knee anterior cruciate ligament disruption. In subsequent reports, Dr. Blackwell noted that she was progressing well postoperatively. On March 6, 2007 appellant was hospitalized for a deep vein thrombosis and discharged on March 15, 2007.

The employing establishment submitted an undated e-mail to the tactical training instructor, advising that appellant attended training at the facility from December 5 to 14, 2006 and filed a CA-1 form on the last day of her training class alleging a knee injury.

Appellant submitted a diary of her condition documenting treatment from March 20 to October 4, 2007. In an October 28, 2007 statement, she asserted that she was seeking medical attention for her work injury within the prescribed guidelines of the Office and advised that she had relied on erroneous information and guidance by employing establishment personnel. Appellant believed that the 45-day period for continuation of pay commenced the date of her surgery, March 1, 2007 and requested the reinstatement of leave taken from February 20 to 23, 2007 and from February 28 to April 7, 2007.

Appellant continued to submit additional reports for treatment of chondromalacia and mild patella tendinopathy of the left knee. On July 24, 2007 Dr. Blackwell performed arthroscopic partial medial meniscectomy of the left knee and removal of loose body and diagnosed left knee medical meniscus tear. In a June 21, 2007 duty status report, Dr. Mahdi Al-Bassam, a Board-certified cardiologist, noted that appellant was totally disabled from work. On August 6, 2007 appellant presented with extreme pain of the left leg following left knee surgery and the physician admitted her to the hospital for further treatment.

The employing establishment submitted an undated statement and noted that appellant attended firearms training from December 13 to 15, 2007 and was required to wear a uniform which included carrying a firearm. The employing establishment referenced time and attendance records following her injury in December 2006, which noted that for pay periods 25 and 26 in 2006 and pay periods 1, 2 and 3 in 2007, appellant did not use any leave, rather she worked overtime several days.

In a decision dated December 17, 2007, the hearing representative affirmed the April 10, 2007 decision, as modified to find that appellant timely filed a CA-1 form within 30 days of the December 13, 2006 injury. However, the hearing representative found that there was no evidence that she lost time from work within 45 days of the date of injury and therefore was not entitled to continuation of pay.

### **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

---

<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, a person 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 Office’s procedures provide in pertinent part:

“Period of Entitlement. The 45 days during which pay may be continued are calendar days, not workdays --

(a) Beginning of Period. If the employee has stopped work due to the disabling effects of a traumatic injury, the period begins with the first full day or shift of the disability, provided that it begins within 45 days of the injury.”<sup>5</sup>

### ANALYSIS

The Office accepted appellant’s claim for sprain of the cruciate ligament of the right knee and derangement of the posterior horn of the right medial meniscus and authorized arthroscopic surgery, which was performed on March 1, 2007. It is not disputed that appellant filed her traumatic injury claim within 30 days of the date of her injury. However, to be entitled to continuation of pay, the Office’s federal regulations provide that a claimant must “begin losing time from work due to the traumatic injury within 45 days of the injury.”<sup>6</sup> In this case, the evidence does not establish that appellant lost any time from work due to the accepted injury or for medical treatment of the accepted injury within 45 days of December 5, 2006.

Appellant submitted several reports from Dr. Blackwell who treated her as of February 20, 2007 for a right knee injury. However, Dr. Blackwell’s report is insufficient to establish appellant’s claim for continuation of pay as the physician did not state that she was

---

<sup>2</sup> Section 8122(a)(2) provides that written notice of injury was 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) and 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> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.6(a) (March 2004). See also Chapter 2.807.6(c) (the claimant’s entitlement to COP must begin within 45 days of the date of injury, whether its use results from disability due to the original injury or the need for medical care).

<sup>6</sup> *Supra* note 4.

disabled due to the accepted injury within 45 days of December 5, 2006. Therefore, his reports are insufficient to support continuation of pay within the 45-day period of December 5, 2006. Moreover, the reports of Dr. Al-Bassam do not establish that appellant was totally disabled as of December 5, 2006 due to her accepted work injury.

The Board finds that the evidence of record does not support that appellant lost time from work as a result of the accepted work injury until she first sought medical treatment on February 20, 2007 which was more than 45 days following the date of injury. Accordingly appellant is not entitled to continuation of pay.

Appellant asserted that although she worked from December 5, 2006 to January 19, 2007, she attempted to seek medical attention during that period but was unable to do so because she had not been assigned a case number from the Office. She asserted that she did not seek medical treatment until February 20, 2007 and did not take leave until that time because she was misinformed by her employer. The Board notes that the time and attendance records following appellant's injury in December 2006 for pay periods 25 and 26 in 2006 (December 10, 2006 to January 6, 2007) and pay periods 1, 2 and 3 in 2007 (January 7 to February 17, 2007) reveal that she did not use any leave. The Board notes that there is no provision under the Act to authorize continuation of pay for wage loss incurred for the first time more than 45 days following the date of injury. Appellant's assertion that she was misinformed by the employing establishment is insufficient to establish entitlement to continuation of pay. It is a well-settled principle of workers' compensation law that ignorance of statutory requirements will not be an excuse for noncompliance with those regulations.<sup>7</sup>

Consequently, appellant is not entitled to continuation of pay as she did not sustain any lost time from work due to her traumatic injury within 45 days of the injury.<sup>8</sup>

### **CONCLUSION**

The Board finds that appellant has not established that she is entitled to continuation of pay for the period December 5, 2006 to January 19, 2007.

---

<sup>7</sup> See *Robert E. Kimzey*, 40 ECAB 762 (1989).

<sup>8</sup> This decision applies only to appellant's entitlement to continuation of pay. It does not affect appellant's entitlement to appropriate compensation for any time missed from work due to his accepted employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decisions dated December 17 and April 10, 2007 are affirmed.

Issued: March 16, 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