

FACTUAL HISTORY

The Office accepted that on June 11, 2004 appellant, then a 66-year-old claims representative, sustained a right rotator cuff tear when stapling heavy folders.¹ Appellant stopped work on January 31, 2005 and underwent a right rotator cuff repair on February 2, 2005. She received compensation on the supplemental rolls beginning on March 11, 2005 and on the periodic rolls beginning on April 4, 2005. Appellant returned to part-time limited duty on May 10, 2005, gradually increasing to full-time restricted duty.²

On March 10, 2008 appellant requested that the employing establishment provide a telephone headset and ergonomic keyboard due to her accepted shoulder injury. She obtained a June 24, 2008 letter from Dr. Paul J. Sutej, an attending rheumatologist, recommending the headset and keyboard. Appellant advised her supervisor in June 24 and 26, 2008 e-mails that she obtained a letter of medical necessity from Dr. Sutej and would receive another from her orthopedist on June 26, 2008.

In a June 26, 2008 report, Dr. Scott Pennington, an attending Board-certified orthopedic surgeon, noted that appellant presented that day to receive his letter recommending a telephone headset due to the effects of the accepted right rotator cuff tear.³ He noted that appellant fell in his reception area while waiting to obtain the letter, fracturing her right fifth metatarsal.

On July 21, 2008 appellant filed a traumatic injury claim (Form CA-1), claiming a June 26, 2008 right foot fracture sustained in Dr. Pennington's waiting room while obtaining work accommodations. She claimed continuation of pay. The employing establishment confirmed that it required medical documentation supporting her request for accommodations. The Office assigned the claim File No. xxxxxx514. Appellant did not return to work.

The Office processed the claim as a consequential injury as it occurred while obtaining job accommodations related to the accepted right shoulder condition. It accepted a right fifth metatarsal fracture under File No. xxxxxx058 and deleted File No. xxxxxx514. The Office noted that appellant was not entitled to continuation of pay for a consequential injury. In a November 3, 2008 letter, appellant asserted her entitlement to continuation of pay from June 26 to September 5, 2008.

By decision dated November 19, 2008, the Office denied appellant's claim for continuation of pay on the grounds that the June 26, 2008 incident constituted a consequential injury and not a new traumatic injury.

¹ By decision dated July 13, 2006, the Office denied appellant's claim for reflex sympathetic dystrophy syndrome of the right shoulder. This decision is not before the Board on the present appeal.

² On November 10, 2005 the Office accepted that appellant sustained a traumatic right hip injury at work when a filing cabinet fell on her. It assigned the claim File No. xxxxxx251. This claim is not before the Board on the present appeal.

³ In a July 3, 2008 report, Dr. Pennington requested that the employing establishment provide appellant with a telephone headset and ergonomic keyboard to accommodate the effects of the accepted right shoulder injury.

In a November 25, 2008 letter, appellant requested a telephonic hearing, held March 5, 2009. During the hearing, counsel acknowledged that appellant was not entitled to continuation of pay for the June 26, 2008 consequential injury. Appellant explained that she wanted continuation of pay in lieu of compensation benefits because she would receive more money.

By decision dated and finalized May 19, 2009, the Office affirmed the November 19, 2008 decision, finding that appellant was not entitled to continuation of pay related to the June 26, 2008 consequential injury. It noted that appellant could file a claim for compensation for any work absences related to the June 26, 2008 injury.

LEGAL PRECEDENT

The Federal Employees' Compensation Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.⁴ Continuation of pay requires the employing establishment to continue the employee's regular pay during any periods of disability, up to a maximum of 45-calendar days. This is paid by the employing establishment, not the Office. However, the ultimate decision as to whether appellant is eligible for continuation of pay rests with the Office.⁵

Continuation of pay is payable only for time lost from work due to an initial traumatic injury.⁶ 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."⁷

An initial traumatic injury may give rise to a consequential injury.⁸ When an injury arises in the course of employment, every natural consequence that flows from that initial injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to a claimant's own intentional misconduct.⁹ Such consequential or secondary injury is compensable because it arises directly from an accepted injury.¹⁰

⁴ 5 U.S.C. § 8118(a).

⁵ 20 C.F.R. § 10.200.

⁶ *Id.* at § 10.205(a)(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

⁷ *Id.* at § 10.205(a)(1-3). *See also J.M.*, 61 ECAB ____ (Docket No. 09-1563, issued February 26, 2010).

⁸ *S.M.*, 58 ECAB 166 (2006); *Debra L. Dilworth*, 57 ECAB 516 (2006).

⁹ *Mary Poller*, 55 ECAB 483, 487 (2004). *See also S.M.*, *supra* note 8.

¹⁰ *Kathy A. Kelley*, 55 ECAB 206 (2004).

ANALYSIS

The Office accepted that appellant sustained a right rotator cuff tear in the performance of duty on June 11, 2004. On June 26, 2008 appellant fractured her right fifth metatarsal at her doctor's office while obtaining a required work accommodations letter related to the accepted shoulder injury. She claimed a new traumatic injury; however, the Office determined that the claim was properly one for consequential injury, as the June 26, 2008 injury flowed directly from the accepted rotator cuff tear. As the injury was consequential and not a new traumatic injury, appellant was not entitled to continuation of pay. Counsel acknowledged at the March 5, 2009 hearing that appellant was not eligible to receive continuation of pay for the June 26, 2008 injury.

It is well established that continuation of pay is payable only for wage loss due to an initial traumatic injury.¹¹ There is no provision under the Act or its regulations authorizing continuation of pay for a consequential injury. Therefore, appellant is not eligible to receive continuation of pay for the June 26, 2008 consequential right foot fracture. She remains entitled to compensation for wage loss and medical expenses related to the June 26, 2008 injury.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay related to an accepted consequential injury.

¹¹ 20 C.F.R. § 10.205(a)(3). See also *Carol A. Lyles*, supra note 6.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 19, 2009 is affirmed.

Issued: April 13, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board