

of Traumatic Injury) within 30 days of the October 21, 2005 injury, as required. On July 20, 2006 the Office accepted her claim for a closed fracture of the left fibula and a left ankle sprain.

By decision dated August 13, 2008, the Office denied appellant's claim for continuation of pay on the grounds that she failed to submit a written claim within 30 days of her October 21, 2005 employment injury.

Appellant requested a hearing that was held on February 17, 2009. She testified that on the day of the injury, October 21, 2005, she reported her injury to her supervisor and to the medical officer on duty. Appellant was not asked to complete a form. She submitted a CA-1 claim form on December 6, 2005 when she returned to work. Her representative argued that filing a CA-20 (Attending Physician's Report) met the requirement for filing a notice of traumatic injury on an approved form.¹

On March 13, 2009 the employing establishment contended that a CA-20 form did not meet the requirement for entitlement to continuation of pay. It noted that the CA-20 is completed by a physician, not the employee, and there is no place provided on the form for the employee to sign the form as a means of filing written notice of injury and a claim for continuation of pay.

By decision dated May 1, 2009, an Office hearing representative affirmed the August 13, 2008 decision denying continuation of pay for appellant's October 21, 2005 employment injury.

LEGAL PRECEDENT

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."² The Federal Employees' Compensation Act authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.³

ANALYSIS

On December 6, 2005 appellant filed a claim for an October 21, 2005 traumatic injury. Because she did not file a claim within 30 days, the time specified in sections 8118(a) and 8122(a)(2) of the Act,⁴ she is not entitled to continuation of pay.

¹ The record contains a CA-20 dated November 17, 2005 from Dr. Robert J. Rosenstein, appellant's attending podiatrist, that was faxed to the employing establishment on November 22, 2005.

² 20 C.F.R. § 10.205(a)(1-3).

³ 5 U.S.C. § 8118(a).

⁴ *Id.*; 5 U.S.C. § 8122(a)(2).

Section 8122 of the Act provides that original claims for compensation for disability or death must be filed within 3 years after the injury or death unless the immediate supervisor had actual knowledge of the injury or death within 30 days or written notice of death or injury, as specified in section 8119, was given within 30 days. Actual knowledge and written notice of injury under section 8119 thereby serve to satisfy the statutory period for filing an original claim for compensation. The Office accepted the claim as timely and paid compensation.

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, she is not entitled to continuation of pay, notwithstanding prompt notice of injury. The record shows that appellant provided notice of injury to her supervisor on October 21, 2005 but this oral notice is not determinative to whether she is entitled to continuation of pay under section 8118(a).

Appellant argued that her supervisor did not ask her to complete a claim form on October 21, 2005 and she submitted a CA-1 claim form on December 6, 2005 when she returned to work. In the case of *William E. Ostertag*,⁵ 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.⁶ Appellant contends that the CA-20, attending physician’s report, submitted by her doctor on November 17, 2005 met the requirement for filing a notice of traumatic injury on an approved form. However, a CA-20 form is not accepted by the Office as one of the approved forms for filing written notice of a claim for wage loss due to a traumatic injury.⁷ The CA-20 form is a medical document from an employee’s physician and does not constitute a claim for compensation by the employee. It is the claimant’s burden to provide written notice of injury and a CA-20 form is not completed or signed by the claimant. Appellant did not submit written notice of injury on an approved form until December 6, 2005, more than 30 days after the October 21, 2005 employment injury, when she submitted a CA-1 form. Therefore, appellant is not entitled to continuation of pay.

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for her October 21, 2005 employment injury.

⁵ 33 ECAB 1925 (1982).

⁶ *Laura L. Harrison*, 52 ECAB 515 (2002).

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7 (March 2004) which lists the approved forms as CA-1, CA-2, CA-2a and CA-7, forms that contain “words of claim.”

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1, 2009 and August 13, 2008 are affirmed.

Issued: February 26, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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