

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

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Knoxville, TN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 10-760
Issued: October 21, 2010**

Appearances:

*Glen B. Rutherford, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 15, 2010 appellant filed a timely appeal from the July 22, 2009 merit decision of the Office of Workers' Compensation Programs denying his claim for continuation of pay. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant was entitled to receive continuation of pay based on his March 4, 2008 traumatic injury.

FACTUAL HISTORY

On August 14, 2008 appellant, then a 37-year-old mail carrier, filed a Form CA-1 (traumatic injury claim) alleging that he sustained neck, left shoulder and back injuries on

March 4, 2008 when his mail delivery vehicle collided with another motor vehicle.¹ He checked a box on the form indicating that he wished to receive continuation of pay. The Office accepted that he sustained a tear of the superior glenoid labrum of his left arm. Appellant stopped work on March 4, 2008 and returned to work in mid April 2008. The Office paid him compensation for periods of disability.

In a March 15, 2008 letter, Michele Kelso, appellant's immediate supervisor, stated that on March 4, 2008 at approximately 8:15 a.m. appellant "notified the Postal Service of an accident in which he was involved at the intersection of Rutledge Pike and Loves Creek Road." She was advised that appellant's vehicle was damaged in the March 4, 2008 accident and noted that appellant was currently off work due to the accident.

The Office asked appellant why he did not file a claim for continuation of pay until August 2008. In September 2008, the Office received a statement in which appellant advised that he reported the accident to Ms. Kelso on March 4, 2008.

In a November 12, 2008 decision, the Office denied appellant's claim for continuation of pay. It found that he was not entitled to continuation of pay during his absence from work for the period March 4 to April 17, 2008. The Office stated, "The reason for this decision is because the injury was not reported on a form approved by [the Office] within 30 days following the injury. Specifically, you did not report your injury on Form CA-1 until August 14, 2008, 163 days after your date of injury."

Appellant requested a telephone hearing with an Office hearing representative. During the May 13, 2009 hearing, he testified that he informed Ms. Kelso on March 4, 2008 that he had been in a motor vehicle accident. Appellant asserted that nobody contacted him about filling out a form in order to file a claim.

In a July 22, 2009 decision, the Office hearing representative affirmed the November 12, 2008 decision denying continuation of pay. He found that the fact that appellant verbally informed his supervisor on March 4, 2008 of an accident that day did not meet the requirement of filing a timely written notice.

LEGAL PRECEDENT

Section 8118 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 Secretary of Labor within the time specified in section 8122(a)(2) of the Act.² Section

¹ Appellant indicated that the accident occurred at the intersection of Rutledge Pike and Loves Creek Road in Knox County, TN. On July 14, 2008 counsel advised the employing establishment that appellant intended to file a compensation claim and requested the appropriate forms.

² 5 U.S.C. § 8118. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment over a period longer than a single workday or shift. 20 C.F.R. §§ 10.5(q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

8122(a)(2) provides that written notice of injury must be given as specified in section 8119.³ 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. Section 8118 makes receipt of 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 wage loss within 30 days, he 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 a 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 August 14, 2008 appellant filed a Form CA-1 (traumatic injury claim) alleging that he sustained neck, left shoulder and back injuries in a motor vehicle accident on March 4, 2008. He claimed continuation of pay. The Office denied appellant's claim for continuation of pay, finding that he failed to provide notice of injury in writing within 30 days after the injury.

The Board finds that appellant did not meet the standards for receiving continuation of pay. Appellant did not provide notice of traumatic injury in writing within 30 days of the injury. He first gave written notice on August 14, 2008 when he filed a Form CA-1 claiming compensation for a March 4, 2008 accident. 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 employment injury.⁸ On appeal appellant claimed his continuation of pay should have been accepted because he verbally notified his immediate supervisor, Ms. Kelso, of his March 4, 2008 accident on the date of the accident. However, this verbal notice does not satisfy the requirement of written notice within 30 days.⁹

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).

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). When a Form CA-1 is not available, using another form would not alone preclude receipt. 20 C.F.R. § 10.205(a)(2).

⁸ *See Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

⁹ *See Loretta R. Celi*, 51 ECAB 560 (2000) (verbal notice of an injury to a supervisor within 30 days does not satisfy the requirement of sections 8118 and 8119(a) and (c)).

Appellant did not make any written claim for a period of wage loss within 30 days of the March 4, 2008 accident and he is not entitled to continuation of pay, notwithstanding prompt verbal notice of injury.¹⁰ The Office properly denied his claim for continuation of pay.

CONCLUSION

The Board finds that appellant is not entitled to receive continuation of pay based on his March 4, 2008 injury.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 21, 2010
Washington, DC

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

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

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

¹⁰ On appeal appellant alleged that he was never given information about filing a compensation claim until his counsel obtained claim forms from the employing establishment in August 2008. The Board notes that it is the responsibility of appellant to comply with the relevant standards for receiving continuation of pay.