

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

L.S., Appellant)
and) Docket No. 11-1720
U.S. POSTAL SERVICE, POST OFFICE,) Issued: February 13, 2012
Independence, KY, Employer)

)

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 15, 2011 appellant filed a timely appeal of a June 16, 2011 Office of Workers' Compensation Programs' (OWCP) decision denying continuation of pay. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUE

The issue is whether appellant established entitlement to continuation of pay.

FACTUAL HISTORY

On February 16, 2011 appellant, then a 43-year-old rural carrier filed a traumatic injury claim (Form CA-1), which she completed on February 13, 2011, alleging that on January 14, 2011 she sustained a torn rotator cuff in her left shoulder. OWCP accepted her claim for left shoulder supraspinatus sprain on March 14, 2011. By decision dated March 15, 2011, it denied

¹ 5 U.S.C. § 8101 *et seq.*

appellant's claim for continuation of pay for the period January 15 to February 28, 2011 as she did not file the Form CA-1 until February 16, 2011 more than 30 days after the January 14, 2011 employment injury. Appellant filed a claim for compensation requesting compensation for leave without pay from March 1 through April 8, 2011. Her time analysis form indicated that she used sick and annual leave from February 26 through March 4, 2011, sick leave from March 5 through 11, 2011 and from March 12 through 18, 2011. OWCP authorized compensation from March 1, 2011. It entered appellant on the periodic rolls on March 19, 2011.

Appellant requested reconsideration of the denial of continuation of pay and asked to receive continuation of pay from January 15 to February 28, 2011. She stated that she filed a claim on January 25, 2011. Appellant submitted a notice of recurrence of disability (Form CA-2a) dated January 25, 2011 which listed the date of recurrence as January 14, 2011 and indicated that she first sought medical treatment on January 18, 2011. On this form, she stated that on January 14, 2011 she picked up a package and felt a pop in her left shoulder. Appellant went on to explain when she received medical treatment.

By decision dated June 16, 2011, OWCP reviewed the merits of appellant's claim and noted that she filed a Form CA-2a on January 25, 2011 and "clearly describe[d] a new injury at work." It stated that a new case was created based on this form. OWCP further noted that appellant did not complete a Form CA-1 until February 13, 2011 more than 30 days from the date of injury. It denied appellant's claim for continuation of pay as she did not submit it "on the required form."

LEGAL PRECEDENT

Section 8118 of FECA² 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 her immediate supervisor on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. 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.³

Claims that are timely under section 8122 are not necessarily timely under section 8118(a). FECA authorizes continuation of pay for an employee who has filed a valid claim for traumatic injury.⁴ 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 or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.⁵

² *Id.* at §§ 8101-8193; § 8118.

³ *Id.* at § 8119(a)(c).

⁴ *Id.* at § 8118(a).

⁵ See W.W., 59 ECAB 533 (2008). See also P.R., Docket No. 08-2239 (issued June 2, 2009).

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 OWCP. However, the ultimate decision as to whether appellant is eligible for continuation of pay rests with OWCP.⁶

Continuation of pay is payable only for time lost from work due to an initial traumatic injury.⁷ 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 (but if that form is not available, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁸ Whether a particular injury caused an employee disability from employment is a medical issue, which must be resolved by competent medical evidence.⁹

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.¹⁰ OWCP's procedure manual states that another OWCP-approved form, such as CA-2, CA-2a or CA-7 forms, which contains words of claim, can be used to satisfy timely filing requirements.¹¹

ANALYSIS

Appellant filed a Form CA-2a on January 25, 2011 and from the face of that OWCP-approved form, OWCP determined that she was "clearly describ[ing] a new injury." OWCP opened a new claim for her based on this form and ultimately accepted her claim for a traumatic injury on March 14, 2011. Appellant did not file a Form CA-1 until February 16, 2011.

However, the Board finds that OWCP improperly denied appellant's request for continuation of pay. In accordance with section 10.205 of OWCP's regulations,¹² appellant used another form to file her claim and under that provision would not, on those grounds alone, be precluded from receiving continuation of pay. OWCP's procedure manual as noted above allows for the use of another OWCP-approved form which contains words of claim. OWCP clearly stated that the Form CA-2a that appellant submitted was sufficient to indicate that she was filing a new injury and that a new claim file was opened based on this form. Appellant filed the OWCP-approved Form CA-2a on January 25, 2011 within 30 days of her January 14, 2011 date

⁶ 20 C.F.R. § 10.200.

⁷ *Id.* at § 10.205(a)(3). See also *Carol A. Lyles*, 57 ECAB 265 (2005).

⁸ *Id.* at 10.205(a)(1-3). See also *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁹ *Carol A. Lyles*, *supra* note 7.

¹⁰ 20 C.F.R. § 10.210(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7(a) (March 2004).

¹² 20 C.F.R. § 10.205(a)(2).

of injury. The Board finds that she has established that she filed an appropriate claim within 30 days which would entitle her to continuation of pay.¹³

On remand OWCP should calculate the continuation of pay to which appellant is entitled. Following this and such further development as it deems necessary, OWCP shall then issue a *de novo* decision.

CONCLUSION

The Board finds that appellant filed a claim form within 30 days entitling her to consideration of continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the June 16, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: February 13, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ See *Brodrick L. Harrell*, 51 ECAB 697 (2000).