

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

C.B., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
JESSE BROWN MEDICAL CENTER,)
Chicago, Il, Employer)

Docket No. 12-227
Issued: May 17, 2012

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On November 22, 2011 appellant, through his attorney, filed a timely appeal of a July 13, 2011 Office of Workers' Compensation Programs' (OWCP) merit 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 May 20, 2011 appellant, then a 64-year-old pipe fitter, filed a traumatic injury claim for compensation alleging that on March 9, 2010 he fell in the hallway due to dizziness, high blood pressure, stress and anxiety. He stated that his head was cut from the fall. On the reverse

¹ 5 U.S.C. § 8101 *et seq.*

of the form, appellant's supervisor noted that appellant stopped work on March 9, 2010 and returned to work on March 16, 2010.

By decision dated July 13, 2011, OWCP accepted appellant's claim for a contusion of the face, scalp and neck. In a separate decision of the same date, it denied his claim for continuation of pay finding that the injury was not reported on an appropriate form within 30 days of the injury.

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 his 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

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

² 5 U.S.C. §§ 8101-8193, 5 U.S.C. § 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).

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).

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 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 Form CA-2, CA-2a or CA-7, which contains words of claim, can be used to satisfy timely filing requirements.¹¹

ANALYSIS

Appellant filed a notice of traumatic injury on May 20, 2011 alleging that he fell and injured his head on March 9, 2010. The record establishes that he did not file a claim for traumatic injury of pay within 30 days. Appellant filed his traumatic injury claim on May 20, 2011, more than one year after his employment injury on March 9, 2010. As appellant did not file his within 30 days of his employment injury, he is not entitled to continuation of pay. Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury. FECA 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 injury.¹² As appellant did not file his traumatic injury claim within 30 days he is not entitled to continuation of pay.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay for his March 9, 2010 employment injury.

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 C.S., Docket No. 11-1056 (issued November 7, 2011).

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 17, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

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