

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

J.J., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Biloxi, MS, Employer**

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**Docket No. 12-1045
Issued: October 9, 2012**

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, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 18, 2012 appellant filed a timely appeal from the March 28, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied 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 over the merits of this case.

ISSUE

The issue is whether appellant is entitled to continuation of pay.

FACTUAL HISTORY

On November 29, 2011 appellant, a 57-year-old clerk, filed a traumatic injury claim alleging that she sustained an injury in the performance of duty on March 28, 2011. She turned around in her chair and struck her left knee on a piece of wood under the desk. OWCP accepted appellant's claim for left knee contusion.

¹ 5 U.S.C. § 8101 *et seq.*

In a January 11, 2012 decision, OWCP found that appellant was not entitled to continuation of pay. It found that she did not report her traumatic injury on a form approved by OWCP within 30 days following the injury. OWCP also explained that this decision concerned only continuation of pay and did not affect her entitlement to other compensation benefits. “You may claim compensation for wage loss resulting from this decision by filing [a] Form CA-7.”

On March 28, 2012 an OWCP hearing representative reviewed the written record and affirmed the denial of continuation of pay. The hearing representative found no evidence that appellant supplied her employing establishment with a timely written notice of traumatic injury on a form approved by OWCP within 30 days of the injury.

On appeal, appellant argues that she did everything she was told to do. The mix up was not on her part, it was on the part of OWCP. Appellant stated that she would like to be paid for her time off work.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes continuation of pay, not to exceed 45 days, of an employee “who has filed a claim for a period of wage loss due to a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.”² The latter section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury.³

The Board has held that section 8122(d)(3) of FECA,⁴ which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay. Thus, there is no provision in the law for excusing an employee’s failure to file a claim within 30 days of the employment injury.⁵

ANALYSIS

For employees who sustain a traumatic injury, FECA provides that the employing establishment must continue the employee’s regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay (COP). The employing establishment, not OWCP, pays continuation of pay.⁶

² 5 U.S.C. § 8118(a).

³ *George A. Harrell*, 29 ECAB 338 (1978).

⁴ 5 U.S.C. § 8122(d)(3).

⁵ *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

⁶ 20 C.F.R. § 10.200(a).

One purpose of continuation of pay is to eliminate the interruption to the injured employee's salary due to delay between the notice of injury and payment of compensation benefits.⁷ The late filing of a claim for a period of wage loss defeats that purpose.

Appellant's employment injury occurred on March 28, 2011. She did not file a written claim for a period of wage loss due to the traumatic injury within 30 days. As there is no provision in FECA for excusing a late filing, appellant is not entitled to continuation of pay. This is so regardless of any failure on the part of the employer⁸ or the local FECA representative.

Appellant argued that she did everything she was told to do. The mix up was not on her part, it was on the part of OWCP. As OWCP found, its decision denying continuation of pay did not affect appellant's entitlement to other compensation benefits. Appellant may still pursue a claim for wage loss, as distinguished from continuation of pay, for any disability or period of wage loss caused by the accepted employment injury.

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 2012
Washington, DC

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

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

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

⁷ *Supra* note 4.

⁸ *See* 20 C.F.R. § 10.211 (the employer's responsibilities in COP cases).