

FACTUAL HISTORY

On October 22, 2012 appellant, then a 47-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that he injured his left shoulder, neck, bilateral arm and hands in the performance of duty on July 19, 2012. The claim form included a witness statement from Ronald G. Stein who testified that he was working across from appellant on July 19, 2012 when he saw him pulling and emptying tubs using his right side and was told about the sudden discomfort to appellant's neck and shoulder. The employing establishment indicated that notice of the injury was received on October 25, 2012.

Appellant submitted a November 27, 2012 witness statement from Mr. Stein, who reiterated the factual history he provided on the claim form.

On December 13, 2012 OWCP accepted the claim for cervical sprain/strain and left shoulder sprain/strain.

By decision dated December 13, 2012, OWCP denied appellant's claim for continuation of pay on the basis that he failed to report the July 19, 2012 employment injury on a form approved by OWCP within 30 days.

LEGAL PRECEDENT

Section 8118 of FECA³ 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 or 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.⁴ 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.⁵ 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.⁶

³ 5 U.S.C. §§ 8101-8193, 5 U.S.C. § 8118.

⁴ *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁵ *Id.* at § 8118(a).

⁶ *See P.R.*, Docket No. 08-2239 (issued June 2, 2009). *See also W.W.*, 59 ECAB 533 (2008).

ANALYSIS

On October 22, 2012 appellant filed a claim for a July 19, 2012 traumatic injury. Because he did not file a claim within 30 days from the date of injury, the time specified in section 8118(a) and 8122(a)(2) of FECA,⁷ he is not entitled to continuation of pay.

On appeal appellant contends that he should have received continuation of pay as he immediately reported his injury to his supervisor that same day before returning to work. 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. The witness statements from Mr. Stein fail to show that appellant provided notice of injury to his employer. Moreover, oral notice is not determinative of whether he is entitled to continuation of pay under section 8118(a).⁸

In the case of *William E. Ostertag*,⁹ 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 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 the date of injury.¹⁰ Appellant did not submit written notice of injury on an approved form until October 22, 2012, more than 30 days after the July 19, 2012 employment injury, when he submitted a CA-1 form.¹¹ Therefore, 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's claim for continuation of pay for his July 19, 2012 employment injury was not timely filed.

⁷ 5 U.S.C. §§ 8118(a), 8122(a)(2).

⁸ See *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁹ 33 ECAB 1925 (1982).

¹⁰ See *Laura L. Harrison*, 52 ECAB 515 (2001). See also *S.C.*, Docket No. 10-460 (issued January 26, 2011).

¹¹ See *Robert E. Kimzey*, 40 ECAB 762 (1989) where the Board found that, despite appellant's contentions, *inter alia*, that he attempted to notify the proper employing establishment officials to file a compensation claim and they were unaware of the correct filing procedures, as no exceptional circumstances excuse timely filing for continuation of pay, he did not file his claim within the applicable time frames. The Board noted that appellant's narrative notification did not comport with OWCP's regulations setting forth the requirements for filing. *Id.* at 764 n.4. See also 20 C.F.R. §§ 10.205(a) and 10.210(a).

ORDER

IT IS HEREBY ORDERED THAT the December 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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