



### **FACTUAL HISTORY**

On May 11, 2012 appellant, then a 47-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her left shoulder in the performance of duty on January 17, 2012. The employing establishment indicated on the claim form that appellant did not inform anyone of the injury until May 11, 2012.

Appellant submitted a May 13, 2012 statement from a witness who testified that he was working with appellant on January 17, 2012 and saw a gate open and fall onto her shoulder and head while they were caging up mail.

On June 26, 2012 OWCP accepted appellant's claim for sprain of the shoulder and upper arm, unspecified site left.

By decision dated June 26, 2012, OWCP denied appellant's claim for continuation of pay on the basis that she failed to report the January 17, 2012 employment injury on a form approved by OWCP within 30 days.

### **LEGAL PRECEDENT**

Section 8118 of FECA<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

In order to establish entitlement to continuation of pay, an employee must establish, on the basis of reliable, probative and substantial evidence, that he or she was disabled as a result of a traumatic employment injury. As part of this burden, he or she must furnish medical evidence from a qualified physician who, based on a complete and accurate history, concludes that the

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<sup>3</sup> 5 U.S.C. §§ 8101-8193; 5 U.S.C. § 8118.

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

<sup>5</sup> *Id.* at § 8118(a).

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

employee's disability for specific periods was causally related to such injury.<sup>7</sup> As used in FECA, the term disability means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury.<sup>8</sup> In other words, if an employee is unable to perform the required duties of the job in which he or she was employed when injured, the employee is disabled.<sup>9</sup>

### ANALYSIS

On May 11, 2012 appellant filed a claim for a January 17, 2012 traumatic injury. Because she 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,<sup>10</sup> she is not entitled to continuation of pay.

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. A May 13, 2012 witness statement fails to show that appellant provided notice of injury to her the employing establishment. Moreover, oral notice is not determinative of whether she is entitled to continuation of pay under section 8118(a).<sup>11</sup>

On appeal appellant contends that she should have received continuation of pay as the only thing she did incorrectly was not report her injury immediately. In the case of *William E. Ostertag*,<sup>12</sup> 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.<sup>13</sup> Appellant did not submit written notice of injury on an

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<sup>7</sup> See *Carol A. Dixon*, 43 ECAB 1065 (1992); *Virginia Mary Dunkle*, 34 ECAB 1310 (1983). See *Carol A. Lyles*, 57 ECAB 265 (2005); 20 C.F.R. § 10.205(a) (to be eligible for continuation of pay, a person 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; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury).

<sup>8</sup> See *K.H.*, Docket No. 10-965 (issued January 10, 2011). See also *Marvin T. Schwartz*, 48 ECAB 521 (1997).

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. §§ 8118(a), 8122(a)(2).

<sup>11</sup> See *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>12</sup> 33 ECAB 1925 (1982).

<sup>13</sup> See *Laura L. Harrison*, 52 ECAB 515 (2001). See also *S.C.*, Docket No. 10-460 (issued January 26, 2011).

approved form until May 11, 2012, more than 30 days after the January 17, 2012 employment injury, when she submitted a CA-1 form.<sup>14</sup> Therefore, she 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 her January 17, 2012 employment injury was not timely filed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 26, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 1, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> 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).