



pain in his right hand. The employing establishment controverted his claim for continuation of pay on the grounds that he did not submit a CA-1 claim form (Report of Traumatic Injury) within 30 days of the June 16, 2012 injury. Appellant stopped work on June 18, 2012 and did not return.

In a statement dated July 23, 2012, appellant indicated that on June 16, 2012 while spreading tubs of flats and magazines he had pain in his right wrist. He noted finishing his tour of duty. Appellant reported to work the next day and showed his swollen wrist to his supervisor, Harry Navarro, who sent him home. He indicated that he contacted his physician and sought medical treatment. Appellant submitted an x-ray of the right wrist dated June 18, 2012 which revealed no abnormalities. Also submitted was a June 29, 2012 duty status report from Dr. Luigi Kirchmann, a chiropractor, who opined that appellant was totally disabled from June 29 to July 27, 2012.

On August 1, 2012 OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. Appellant submitted a magnetic resonance imaging (MRI) scan of the right wrist dated June 29, 2012, a duty status form dated July 3, 2012, signed by a provider whose signature is illegible, a July 26, 2012 report from Dr. Jalil Rashti, a Board-certified orthopedist, a July 26, 2012 duty status report from a physician whose signature is illegible and a prescription form dated August 15, 2012.

By decision dated August 23, 2012, OWCP accepted appellant's claim for sprain of the right wrist. In a separate August 23, 2012 decision, it denied his claim for continuation of pay on the grounds that he failed to submit a written claim within 30 days of his June 16, 2012 employment injury.

On September 11, 2012 appellant requested reconsideration. In a September 11, 2012 statement, he indicated that on June 16, 2012 he was injured at work and reported his status to his supervisor the next business day. Appellant indicated that his supervisor sent him home unaware of the documents that needed to be submitted for an injured employee. He noted that due to his pain he immediately contacted his physician who took him off work. Appellant indicated that he submitted the doctor's note to his employer with a personal injury statement and was authorized to use sick leave. He indicated that on July 23, 2012 he reported to work to submit a doctor's note indicating a period of extended sick leave and was informed about continuation of pay and immediately filled out the necessary forms. Appellant advised that he had no knowledge of what to do until he was educated about worker's compensation law and asserted that his managers should have explained continuation of pay procedures on the day he reported his injury so that he could have timely submitted all necessary claim forms. He submitted reports and treatment notes from medical providers.

By decision dated December 7, 2012, OWCP denied modification of the August 23, 2012 decision denying continuation of pay for appellant's June 16, 2012 employment injury.

## 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.”<sup>2</sup> 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.<sup>3</sup>

OWCP regulations provide, in pertinent part, that 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 a 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>4</sup> FECA authorizes continuation of pay for an employee who has filed a valid claim for a traumatic injury.<sup>5</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>6</sup> 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.<sup>7</sup>

## ANALYSIS

On July 23, 2012 appellant filed a claim for a June 16, 2012 traumatic injury. Because he did not file a claim within 30 days, the time specified in sections 8118(a) and 8122(a)(2) of FECA, he is not entitled to continuation of pay.

OWCP accepted the claim as timely and paid compensation. Claims that are timely under section 8122 are not necessarily timely under section 8118(a). 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 is not entitled to continuation of pay, notwithstanding prompt notice of injury.<sup>8</sup> The record shows that appellant provided notice of injury to his supervisor on June 17, 2012 but this oral

---

<sup>2</sup> 5 U.S.C. § 8118(a).

<sup>3</sup> *J.J.*, Docket No. 12-1045 (issued October 9, 2012); *George A. Harrell*, 29 ECAB 338 (1978).

<sup>4</sup> 20 C.F.R. § 10.205(a)(1-3).

<sup>5</sup> 5 U.S.C. § 8118(a).

<sup>6</sup> *Id.* at § 8122(d)(3).

<sup>7</sup> *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

<sup>8</sup> *W.W.*, 59 ECAB 533 (2008).

notice is not determinative to whether he is entitled to continuation of pay under section 8118(a).<sup>9</sup>

Appellant argued that he informed his manager of his injury on June 17, 2012 and was sent home. He indicated that he had no knowledge of what to do about filing a worker's compensation claim and asserted that his managers should have explained the procedure to him on the day he reported his injury so that he could have submitted all necessary claim forms to OWCP timely. Appellant indicated that on July 23, 2012 he reported to work and submitted a doctor's note and was informed by management about the procedures for obtaining continuation of pay and immediately filled out the necessary forms. In the case of *William E. Ostertag*,<sup>10</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>11</sup>

The Board notes that appellant submitted many medical records in support of his claim but these documents are not accepted by OWCP as one of the approved forms for filing written notice of a claim for wage loss due to a traumatic injury.<sup>12</sup> It is the claimant's burden to provide written notice of injury and an x-ray, MRI scan or a duty status form is not completed or signed by the claimant. Appellant did not submit written notice of injury on an approved form until July 23, 2012, more than 30 days after the June 16, 2012 employment injury. Therefore, he is not entitled to continuation of pay.

On appeal appellant asserts that he was unaware of the 30-day time limit to file his claim and on June 18, 2012 his manager failed to inform him of the procedure for obtaining continuation of pay. As noted above, 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.

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.

---

<sup>9</sup> See *J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>10</sup> *Supra* note 7.

<sup>11</sup> *Laura L. Harrison*, 52 ECAB 515 (2002).

<sup>12</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5(b) (June 2012) which lists the approved forms as CA-1, CA-2, CA-2a and CA-7, forms that contain words of claim.

**CONCLUSION**

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of FECA.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 7, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 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