

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Minneapolis, MN, Employer**

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**Docket No. 15-1677  
Issued: December 11, 2015**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On August 4, 2015 appellant filed a timely appeal from a May 21, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has established eligibility for continuation of pay.

**FACTUAL HISTORY**

On April 6, 2015 appellant, then a 47-year-old city carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on March 4, 2015 he tripped over a shovel and fell injuring his right wrist. The CA-1 form was signed by appellant on March 23, 2015. Appellant's supervisor, Michelle Johnson, signed the form on March 4, 2015. The employing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

establishment stamped the CA-1 form as received on March 19, 2015. However, the employing establishment noted that the claim was not filed within 30 days and indicated the date that it received the notice was April 6, 2015. The employing establishment did not indicate that appellant stopped work.

Appellant was treated by Dr. Desiree Kempcke, a Board-certified orthopedist, on March 18, 2015, who diagnosed intra-articular radius fracture with small displacement of a distal radial ulnar joint fragment. Dr. Kempcke noted that appellant could return to work, but could not lift more than three pounds with his right hand.

On April 20, 2015 OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. Appellant submitted a report from Dr. Kempcke dated March 18, 2015 who diagnosed intra-articular radius fracture with small displacement of a distal radial ulnar joint fragment. He also submitted a report from Dr. Paul Dworak, a Board-certified orthopedist, dated March 19, 2015, who placed appellant in a right short arm cast. An April 10, 2015 report from Dr. Corey Wulf, a Board-certified orthopedist, diagnosed work-related right extra articular distal radius fracture. Dr. Wulf transitioned appellant from the right arm cast to a splint. Each of these physicians found that appellant could return to work within restrictions.

By decision dated May 21, 2015, OWCP accepted appellant's claim for closed fracture of the lower end of the right radius.

In another decision dated May 21, 2015, OWCP denied appellant's claim for continuation of pay because he had failed to submit a written claim within 30 days of his March 4, 2015 employment injury.

### **LEGAL PRECEDENT**

Section 8118(a) of FECA authorizes continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her 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> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</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 is 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

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</sup> *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

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.<sup>5</sup>

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.<sup>6</sup> OWCP's procedures state that another OWCP-approved form, such as CA-2, CA-2a, or CA-7, which contain words of claim, can be used to satisfy timely filing requirements.<sup>7</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>8</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>9</sup>

### ANALYSIS

Appellant filed a written notice of a traumatic injury on April 6, 2015 more than 30 days after his injury on March 4, 2015. Because he filed the claim on April 6, 2015, the Board finds that it was not filed within 30 days of the injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.

On appeal appellant indicated that he originally submitted Form CA-1 unsigned and the CA-1 form was returned. He noted the supervisor who filled out the accident report was moved to a different station and the employing establishment's injury compensation specialist sent the information to the wrong address which caused a delay in the submission of the Form CA-1. Appellant indicated that for these reasons he did not submit a signed Form CA-1 within 30 days of the injury. There is no provision in FECA for excusing a late filing and therefore appellant is not entitled to continuation of pay.<sup>10</sup> This is so regardless of any failure on the part of the employing establishment.<sup>11</sup> The Board finds that appellant was not entitled to continuation of pay as he did not file within the requisite 30 days from the date of injury.<sup>12</sup>

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<sup>5</sup> 20 C.F.R. § 10.205(a)(1-3). *See also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>6</sup> *Id.* at § 10.210(a).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5(b) (June 2012).

<sup>8</sup> 5 U.S.C. § 8122(d)(3).

<sup>9</sup> *Dodge Osborne*, 44 ECAB 849, 855 (1993).

<sup>10</sup> *Id.*

<sup>11</sup> *See* 20 C.F.R. § 10.211 (the employer's responsibilities in continuation of pay cases).

<sup>12</sup> *Id.* This decision only applies to continuation of pay. It does not preclude appellant from filing a claim for wage-loss compensation if he missed time from work due to the accepted injury.

**CONCLUSION**

The Board finds that appellant has not established eligibility for continuation of pay.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 11, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board