

received notice of OWCP's decision. He contends that he should not be taken off COP due to management's error.

FACTUAL HISTORY

On April 20, 2015 appellant, then a 63-year-old engineering equipment operator (road construction worker), filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2015 he had a heart attack while driving a sweeper vehicle out to the flight line area at work. He stopped work on the date of injury. Appellant's supervisor controverted appellant's claim, stating that it was submitted late.

In a witness statement, appellant's coworker related that on March 13, 2015 appellant was in a sweeper that crashed into a truck. He and other employees rushed over to him. When the door to the sweeper was opened, appellant was found slumped over and unresponsive.

Employment records were submitted which included a notification of personnel action (Form SF-50) and description of appellant's engineering equipment operator (road construction worker) position.

In a March 26, 2015 disability certificate, Dr. Pramod V. Kadambi, an attending Board-certified internist with subspecialties in cardiovascular disease and interventional cardiology, advised that appellant was unable to work. The estimated date for his return to work was June 29, 2015. In an April 23, 2015 medical report, Dr. Kadambi provided appellant's history and examination findings. He diagnosed, among other things, coronary artery disease (CAD) and coronary artery arrest. Regarding appellant's coronary artery disease, Dr. Kadambi noted that appellant had a witnessed cardiac arrest at work and was resuscitated. He further noted his medical treatment. Dr. Kadambi reported that appellant did not recall any events from that day. In an April 27, 2015 addendum note to the April 23, 2015 report, he advised that appellant's current prognosis was guarded and provided his physical restrictions.

By letter dated May 4, 2015, OWCP advised appellant of the deficiencies of his claim and afforded him 30 days to submit additional factual and medical evidence. It also requested that the employing establishment submit medical evidence if he had been treated at its medical facility. OWCP noted that the employing establishment had correctly controverted appellant's claim for COP as a notice of injury was not filed within 30 days of injury. It stated that a formal decision regarding entitlement to COP would be issued when a determination was made regarding the merits of his injury claim.

In a May 5, 2015 memorandum, the employing establishment again controverted appellant's claim for COP, stating that he did not report an injury within the 30-day time limitation. It further stated that his heart attack was caused by preexisting health conditions and not by work.

On May 6, 2015 appellant filed a claim (Form CA-7) for compensation for leave without pay (LWOP) from April 28 to May 2, 2015.

In a July 14, 2015 decision, OWCP accepted that the March 13, 2015 incident occurred as alleged. However, it denied appellant's traumatic injury claim as the medical evidence did not

establish a causal relationship between his heart attack and the accepted employment incident. OWCP further denied appellant's claim for COP as the injury was not reported on a form approved by OWCP within 30 days of the injury.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence² including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.⁴ There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁶ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete, factual, and medical background, showing a causal relationship between the claimed condition and the identified factors.⁷ The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.⁸

ANALYSIS -- ISSUE 1

The Board finds that appellant has not met his burden of proof to establish a traumatic injury caused by the accepted March 13, 2015 employment incident. Appellant failed to submit sufficient medical evidence to establish that his heart attack is causally related to the accepted employment incident.

Dr. Kadambi's April 23, 2015 report found that appellant had CAD and coronary artery arrest. He provided a history of the accepted March 13, 2015 employment incident, but failed to

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

⁵ *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

⁶ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

⁷ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁸ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

provide an opinion stating that the diagnosed heart conditions were caused or aggravated by the accepted employment incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁹

Dr. Kadambi's remaining reports are also insufficient to establish an employment-related heart attack. His April 27, 2015 addendum note found that appellant's prognosis was guarded and provided his physical restrictions, yet failed to discuss a diagnosis and cause of the restrictions.¹⁰ Similarly, Dr. Kadambi's March 26, 2015 disability certificate which found that appellant was unable to work through approximately June 29, 2015 failed to discuss the cause of disability during the reported period.

Therefore, the Board finds that there is insufficient medical evidence to establish that appellant sustained a heart attack causally related to the accepted March 13, 2015 employment incident.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8118 of FECA¹¹ 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.¹² 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.¹³ 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.¹⁴

Section 10.205 of OWCP regulations provide in pertinent part that 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

⁹ See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8118.

¹² *Id.* at § 8119(a), (c). See also *Gwen Cohen-Wise*, 54 ECAB 732 (2003).

¹³ *Id.* at § 8118(a).

¹⁴ See *P.R.*, Docket No. 08-2239 (issued June 2, 2009). See also *W.W.*, 59 ECAB 533 (2008).

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.¹⁵

ANALYSIS -- ISSUE 2

The Board finds that appellant is not entitled to continuation of pay because he failed to timely file his claim within 30 days, as required under FECA, and also because his claim for a traumatic injury was denied.

Appellant filed a written notice of injury on April 20, 2015, more than 30 days after his accepted employment incident on March 13, 2015. On appeal, appellant's representative contends that appellant spoke to his supervisor 10 days after the injury occurred and was assured that the paperwork was being filed in a timely manner. Appellant claimed that he was not aware that his claim was not timely filed. There is no provision under FECA for excusing a late filing and appellant is not entitled to continuation of pay.¹⁶ This is so regardless of any failure on the part of the employing establishment¹⁷ or the local FECA representative. The Board finds that appellant's failure to file a claim within 30 days of the March 13, 2015 injury bars his entitlement to continuation of pay.

Furthermore, even if the claim were timely filed, appellant would not be entitled to continuation of pay because, as explained, the traumatic injury claim has been denied. Since there is no traumatic injury, there is no employment-related disability. Consequently, appellant is not eligible for continuation of pay.¹⁸

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his heart attack was causally related to the accepted March 13, 2015 employment incident. The Board further finds that OWCP properly denied his claim for continuation of pay.

¹⁵ 20 C.F.R. § 10.205(a).

¹⁶ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

¹⁷ *See J.M.*, Docket No. 09-1563 (issued February 26, 2010).

¹⁸ *J.O.*, Docket No. 12-0267 (issued June 11, 2012).

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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