



OWCP accepted for left knee contusion, deep vein thrombosis on the left, and cellulitis of the left lower leg.

In a report dated March 6, 2015, Dr. Mark Mantano, a specialist in family medicine, noted that appellant was at maximum medical improvement and had returned to work on March 6, 2015.

In a May 22, 2015 decision, OWCP determined that appellant was not entitled to continuation of pay for the period January 7 to February 21, 2015 because he did not report his injury on a form approved by OWCP within 30 days following the injury. It noted that his reported date of injury was January 7, 2015 and that he filed the Form CA-1 traumatic injury claim on April 29, 2015. OWCP advised appellant that its decision concerned his entitlement to continuation of pay, but did not affect his entitlement to other compensation benefits. Appellant could still claim compensation by filing a Form CA-7, through his employer.

### **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 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 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 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>

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<sup>2</sup> *Id.* at § 8118.

<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).

<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> 5 U.S.C. § 8122(d)(3).

<sup>7</sup> *Dodge Osborne*, 44 ECAB 849, 855 (1993).

**ANALYSIS**

Appellant filed a Form CA-1 written notice of a traumatic injury on April 29, 2015, more than 30 days after his injury on January 7, 2015. Because he filed the claim on April 29, 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. There is no provision in FECA for excusing a late filing and appellant is not entitled to continuation of pay.<sup>8</sup> This is so regardless of any failure on the part of the employing establishment.<sup>9</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>10</sup>

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for continuation of pay from January 7 to February 21, 2015.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 22, 2015 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 10, 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

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<sup>8</sup> *Id.*

<sup>9</sup> *See* 20 C.F.R. § 10.211 (the employing establishment's responsibilities in continuation of pay cases).

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