

October 7, 2013 and returned to work on November 20, 2013. She was followed by Dr. Kevin E. Julian, an attending Board-certified orthopedic surgeon.

In a December 4, 2013 letter, OWCP noted that during a December 3, 2013 telephone call, appellant had stated that she “stopped work on November 23, 2013 after sustaining a new injury.” It advised her that if she planned to claim compensation for that incident, she must file a new claim.

On January 3, 2014 appellant filed an occupational disease claim (Form CA-2) alleging that on November 23, 2013 she sustained a right foot and ankle injury while walking her delivery route. She explained that the claim form was late as she received “incorrect paperwork to complete ... this process.” Appellant stopped work on November 23, 2013. Her supervisor noted that appellant “called in sick” on November 23, 2013, but did not report an injury to the employing establishment until January 3, 2014. OWCP assigned the claim File No. xxxxxx599. It developed the occupational disease claim as a traumatic injury claim.

Appellant filed a claim for compensation (Form CA-7) on January 13, 2014 for the period November 26, 2013 to January 10, 2014 and indicated her desire for continuation of pay. In a January 17, 2014 memorandum, OWCP noted that the Form CA-7 had been initially placed in File No. xxxxxx255, then associated with the proper File No. xxxxxx599.²

In a January 29, 2014 letter, appellant asserted that walking her mail route on November 23, 2013 aggravated the October 7, 2013 employment injury. She contended that the employing establishment gave her the wrong claim form.

On March 3, 2014 OWCP accepted that appellant sustained a right ankle sprain on November 23, 2013. It later expanded the claim to accept reflex sympathetic dystrophy syndrome of the right lower extremity. OWCP paid compensation for the period November 30, 2013 to April 5, 2014.

By decision dated March 3, 2014, OWCP denied appellant’s claim for continuation of pay from November 24, 2013 to January 7, 2014 as she did not report the injury “on a form approved by OWCP within 30 days following” the November 23, 2013 employment injury.

On March 27, 2014 appellant requested an oral hearing which was held on October 14, 2014. At the hearing, counsel contended that the employing establishment erred by providing her a claim form for occupational disease instead of a claim for traumatic injury. He asserted that appellant had a November 27, 2013 “handwritten note,” but acknowledged that she did not file a claim until January 3, 2014. The hearing representative noted that appellant could have utilized Form CA-1, Form CA-2, or Form CA-7 to provide notice of the injury within 30 days.

² In a March 4, 2014 memorandum, OWCP recommended that File No. xxxxxx255, accepted for the October 7, 2013 right ankle and knee sprains, and File No. xxxxxx599, accepted for a November 23, 2013 right ankle sprain, shoulder be doubled under File No. xxxxxx599. However, it does not appear from the case record that OWCP doubled the claims.

By decision dated and finalized November 24, 2014, an OWCP hearing representative affirmed the March 3, 2014 decision denying continuation of pay. He found that appellant did not submit any type of claim form within 30 days of November 23, 2013.

LEGAL PRECEDENT

Section 8118 of FECA³ 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 of the injury.⁴ 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.⁵ 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.⁶

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 treatment; (2) file Form CA-1 within 30 days of the date of injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁷

ANALYSIS

Appellant filed a notice of occupational disease (Form CA-2) on January 3, 2014 for an injury sustained on November 23, 2013. Appellant's supervisor noted that appellant "called in sick" on November 23, 2013, but did not provide written notice of the injury until January 3, 2014, more than 30 days after the accepted November 23, 2013 employment injury. No evidence was received by OWCP which supports an earlier written notice. The evidence of record establishes that appellant did not file her claim within 30 days from the date of injury, as required by section 10.205(a)(2) of OWCP regulations.⁸ The Board therefore finds that appellant is not entitled to continuation of pay.

³ 5 U.S.C. § 8118.

⁴ *Id.* at § 8119(a), (c); *see also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁵ *Id.* at § 8118(a).

⁶ *J.L.*, Docket No. 15-0832 (issued July 28, 2015); *see also W.W.*, 59 ECAB 533 (2008).

⁷ 20 C.F.R. § 10.205(a).

⁸ *J.L.*, *supra* note 6; *see also Guy W. Adkins*, Docket No. 94-0177 (issued June 6, 1995) (finding that the notice of traumatic injury claim form was filed, for continuation of pay purposes, on the date reflected in the official supervisor's report).

On appeal, counsel asserts that the employing establishment failed to fulfill its obligation under 20 C.F.R. § 10.211 to provide appellant a Form CA-1 when she informed them of the November 23, 2013 employment injury. Instead, appellant's supervisor provided a Form CA-7. Counsel also argues that the Form CA-7 appellant allegedly filed on January 13, 2014 under File No. xxxxxx255, for the October 7, 2013 employment injury, constituted timely "words of claim" that preserved her eligibility for continuation of pay under the present claim. He notes that in *Broderick C. Harrell*,⁹ the Board held that written notice of injury within 30 days on a Form CA-2, CA-2a, or CA-7 could satisfy timely filing requirements in lieu of a Form CA-1. The Board notes that counsel's second argument preempts his first. He states correctly that appellant could have preserved her eligibility for continuation of pay had she filed a Form CA-7 under the present claim within 30 days of the November 23, 2013 employment injury. However, appellant did not do so as she did not file the Form CA-7 until January 13, 2014. Moreover, any evidence under File No. xxxxxx255 is irrelevant to the present claim of the record does not demonstrate that OWCP doubled the two claims. Therefore, OWCP has failed to establish continuation of pay, as there were no timely words of claim under the present claim.

CONCLUSION

The Board finds that appellant failed to establish continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2014 is affirmed.

Issued: October 7, 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

⁹ Docket No. 98-2263 (2000).