

FACTUAL HISTORY

On December 9, 2014 appellant, then a 55-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2014 while turning a patient as he was giving him a bed bath, he felt pain in his low back. The Form CA-1 was signed by appellant on December 9, 2014 and he requested continuation of pay. Appellant's supervisor, Akosua K. Sedenu, also signed the CA-1 form on December 9, 2014, but the document was not received by OWCP until August 14, 2015.

On August 18, 2015 OWCP advised appellant of the type of factual and medical evidence needed to establish his claim.

In a statement dated September 16, 2015, appellant noted that on November 5, 2014 he was asked to turn a male patient who weighed 380 pounds and who was paralyzed. He indicated that, while turning the patient, he experienced back pain and he could not finish his shift and went home. Appellant subsequently returned to work and experienced persistent back problems and went on leave through the Family Medical Leave Act. He submitted employing establishment medical records from Dr. Elsie Morris, a Board-certified pediatrician, dated November 12 and December 9, 2014, who had treated him for low back pain. Appellant had reported an acute onset of low back pain on November 5, 2014 while turning a patient. Dr. Morris diagnosed lumbar strain and noted that appellant was off duty.

On October 1, 2015 Dr. Morris noted treating appellant from November 12 to December 17, 2014 for low back pain which occurred after he moved a patient. Appellant reported a history of a previous back injury in 1998 that was stable until he reinjured his back while assisting in turning a patient. Dr. Morris diagnosed degenerative arthritis of the lumbar sacral spine, lumbar strain, and exacerbation of a preexisting condition.

By decision dated October 23, 2015, OWCP accepted appellant's claim for lumbar strain, but in a separate decision that same date it denied his claim for continuation of pay because he had failed to submit a written claim within 30 days of his November 5, 2014 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.³ This latter section provides that written notice of injury shall be given within 30 days.⁴ The context of section 8122 makes clear that this means within 30 days of the injury.⁵

³ *Id.* at § 8118(a).

⁴ *Id.* at § 8122(a)(2).

⁵ *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

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 (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.⁶

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁷ OWCP's procedure manual states that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contains words of claim, can be used to satisfy timely filing requirements.⁸

The Board has held that section 8122(d)(3) of FECA,⁹ 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.¹⁰

ANALYSIS

Appellant filed a written notice of a traumatic injury on December 9, 2014 more than 30 days after his injury on November 5, 2014. Because he filed the claim on December 9, 2014, the Board finds that it was not filed within 30 days of the November 5, 2015 injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.

On appeal appellant explained that he did not know the procedure of filing a claim, that no one had assisted him, and that he had been very sick and homeless. He believed that he should have been awarded continuation of pay as he lost so much from the work injury. Appellant claimed that he was also entitled to back pay from January 2015 to the present time. There is no provision in FECA, however, for excusing a late filing when requesting continuation of pay.¹¹ This is so regardless of any failure on the part of the employing establishment.¹² The

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

⁷ *Id.* at § 10.210(a).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7(a) (March 2004).

⁹ 5 U.S.C. § 8122(d)(3).

¹⁰ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

¹¹ *Id.*

¹² *See* 20 C.F.R. § 10.211.

Board finds that OWCP properly denied continuation of pay as appellant did not file his claim within the requisite 30 days from the date of injury.¹³

CONCLUSION

The Board finds that appellant has not met the requirements for continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹³ *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.