



signed by appellant on June 21, 2017 and she requested continuation of pay. Appellant's supervisor indicated that appellant first reported the claimed injury on June 21, 2017. He controverted appellant's claim for continuation of pay asserting that it was untimely filed within 30 days of the claimed injury. The supervisor signed the Form CA-1 on June 22, 2017.

Appellant's supervisor provided a copy of appellant's official position description and a January 8, 2017 notification of personnel action (Form SF-50) verifying that she held the position as of the date of injury. Appellant provided a February 14, 2017 report from a physician assistant.

In a June 27, 2017 development letter, OWCP notified appellant of the type of factual and medical evidence needed to establish her claim.

The employing establishment provided a June 28, 2017 work status report indicating that appellant stopped work on February 6, 2017. It noted that she filed the Form CA-1 on June 21, 2017 when she was working full-time, full duty.

Appellant provided a July 2, 2017 statement, in which she contended that she attempted to file her claim electronically on February 17, 2017, but apparently "missed something" as she was not accustomed to using a computer.

In support of her claim, appellant submitted medical reports dated February 14 to March 8, 2017 diagnosing a right knee sprain related to the alleged February 6, 2017 incident.<sup>3</sup> These reports were signed by a physician assistant and countersigned by a physician.

By decision dated August 4, 2017, OWCP accepted appellant's claim for a right knee sprain, but in a separate decision of the same date it denied her claim for continuation of pay because she had failed to submit a written claim within 30 days of her February 6, 2017 employment injury.

### **LEGAL PRECEDENT**

Section 8118(a) of FECA<sup>4</sup> 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. This latter section provides that written notice of injury shall be given within 30 days.<sup>5</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>6</sup>

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<sup>3</sup> February 14, 2017 right knee x-rays demonstrated old postoperative changes from an anterior cruciate ligament reconstruction with fixation hardware, a moderate joint effusion, and infrapatellar edema.

<sup>4</sup> 5 U.S.C. § 8118(a).

<sup>5</sup> *Id.* at § 8122(a)(2).

<sup>6</sup> *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.<sup>7</sup>

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.<sup>8</sup> OWCP's procedures provide 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.<sup>9</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>10</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>11</sup>

### ANALYSIS

Appellant filed a written notice of a traumatic injury on June 21, 2017, more than 30 days after her injury on February 6, 2017. Because she filed the claim on June 21, 2017, the Board finds that it was not filed within 30 days of the February 6, 2017 injury, as specified in sections 8118(a) and 8122(a)(2) of FECA.

On appeal, appellant argues that she attempted to file a timely electronic claim, but failed to complete the process as she was inexperienced in using a computer. There is no provision in FECA, however, for excusing a late filing when requesting continuation of pay.<sup>12</sup> The Board finds that OWCP properly denied continuation of pay as appellant did not file her claim within the requisite 30 days from the date of injury.<sup>13</sup>

This decision of the Board applies only to continuation of pay. It does not preclude appellant from filing a claim for wage-loss compensation (Form CA-7) if she missed time from work due to the accepted injury.

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<sup>7</sup> 20 C.F.R. § 10.205(a)(1-3). *See also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>8</sup> *Id.* at § 10.210(a).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5 (June 2012).

<sup>10</sup> 5 U.S.C. § 8122(d)(3).

<sup>11</sup> *Dodge Osborne*, 44 ECAB 849, 855 (1993).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 4, 2017 is affirmed.

Issued: February 5, 2018  
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