

**United States Department of Labor
Employees' Compensation Appeals Board**

M.B., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
NORTH TEXAS HEALTH CARE SYSTEM,
Dallas, TX, Employer

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**Docket No. 18-0959
Issued: October 16, 2018**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 9, 2018 appellant filed a timely appeal from a March 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established eligibility for continuation of pay.

FACTUAL HISTORY

On July 11, 2017 appellant, then a 46-year-old timekeeper, filed a traumatic injury claim (Form CA-1) alleging that on October 13, 2016 he injured the back of his head and neck when he was struck by a wooden plank while in the performance of duty. He signed the Form CA-1 on July 11, 2017 and requested continuation of pay. The employing establishment advised that it had

¹ 5 U.S.C. § 8101 *et seq.*

received notice of the claimed injury on July 11, 2017. It controverted continuation of pay as appellant did not file a claim within 30 days of the alleged employment incident.

OWCP accepted the claim for neck sprain and a concussion without loss of consciousness.

The employing establishment, on July 25, 2017, advised that it had removed appellant from employment on November 21, 2016 due to unsatisfactory job performance.

By decision dated August 14, 2017, OWCP denied appellant's claim for continuation of pay as he had failed to submit a written claim within 30 days of his accepted July 11, 2017 work injury. It also noted that he did not report the injury to the employing establishment until after it terminated his employment.

Appellant, on August 21, 2017, requested a telephone hearing before an OWCP hearing representative. At the telephone hearing, held on February 14, 2018, he advised that he waited to file a claim because a coworker told him that he would lose his job if he took time off due to an injury. Appellant indicated that he sought medical treatment immediately after the injury at the emergency department.

By decision dated March 27, 2018, OWCP's hearing representative affirmed the August 14, 2017 decision. She found that appellant had not reported the injury on the CA-1 form until July 11, 2017, more than 30 days after the accepted October 13, 2016 work injury and subsequent to his termination of employment.

On appeal appellant describes his work injury and advises that coworkers informed him that if he missed work due to an injury he would lose his job. He asserts that the employing establishment terminated his employment because he could not keep up with his work and notes that he had a witness to his injury. Appellant relates that he sustained additional injuries after fainting.

LEGAL PRECEDENT

Section 8118(a) of FECA² 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.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

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

² 5 U.S.C. § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

form would not alone preclude receipt; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁵

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁶ 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.⁷

The Board has held that section 8122(d)(3) of FECA,⁸ 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.⁹

ANALYSIS

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

For employees who sustain a traumatic injury, FECA provides that the employing establishment must continue the employee's regular pay during any period of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay. The employing establishment, not OWCP, pays continuation of pay.¹⁰

One purpose of continuation of pay is to eliminate the interruption to the injured employee's salary due to delay between the notice of injury and payment of compensation benefits.¹¹ The late filing of a claim for a period of wage loss defeats that purpose.

Appellant filed a written notice of his traumatic injury on July 11, 2017, more than 30 days after his injury on October 13, 2016. As he filed the claim on July 11, 2017, the Board finds that it was not filed within 30 days of the accepted October 13, 2016 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Appellant did not officially file a written claim

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

⁶ *Id.* at § 10.210(a).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5 (June 2012).

⁸ 5 U.S.C. § 8122(d)(3).

⁹ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

¹⁰ 20 C.F.R. § 10.200(a).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Claims for Compensation*, Chapter 2.807.2 (June 2012).

related to this incident within 30 days, and there is no provision in FECA for excusing a late filing.¹² Thus, he is not entitled to continuation of pay.¹³

On appeal appellant asserts that a coworker told him that he would lose his position if he missed work due to his injury. He maintains that the employing establishment terminated him because he could not keep up with his assigned duties. Appellant notes that he experienced additional injuries. As discussed, however, there is no provision in FECA for excusing a late filing when requesting continuation of pay.¹⁴ The 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.¹⁵

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).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 27, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 16, 2018
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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

¹² See *J.D.*, Docket No. 16-0104 (issued April 5, 2016); *William E. Ostertag*, 33 ECAB 1925, 1932 (1982).

¹³ See *M.B.*, Docket No. 17-1782 (issued February 5, 2018).

¹⁴ See *J.D.*, *supra* note 12.

¹⁵ *Id.*