

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

_____)	
J.S., Appellant)	
)	
and)	Docket No. 18-1086
)	Issued: January 17, 2019
DEPARTMENT OF THE ARMY, U.S. ARMY)	
MEDICAL COMMAND, Fort Riley, KS,)	
Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 4, 2018 appellant filed a timely appeal from an April 25, 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 met her burden of proof to establish eligibility for continuation of pay.

FACTUAL HISTORY

On March 15, 2018 appellant, then a 60-year-old registered diagnostic radiologic technologist, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left shoulder

¹ 5 U.S.C. § 8101 *et seq.*

tendon rupture on January 9, 2018 while in the performance of duty. She stopped work on January 10, 2018, and resumed work the next day on January 11, 2018. On the reverse side of the claim form, the employing establishment controverted continuation of pay.

In a subsequent statement, appellant indicated that on the afternoon of January 9, 2018 she was providing radiographic support in the operating room at Irwin Army Community Hospital (IACH) when she injured her left shoulder positioning an x-ray tube head. By the time she returned home that evening her shoulder worsened and the next day she could not move her arm. Appellant reportedly notified her supervisor on January 10, 2018, and the following day she received treatment at IACH's emergency department.

OWCP received appellant's January 11, 2018 emergency room treatment records, including diagnostic studies that revealed left shoulder ruptured calcific tendinitis and degenerative changes of the acromioclavicular (AC) joint.

OWCP also received a February 15, 2018 narrative report and a March 22, 2018 attending physician's report (Form CA-20) from Dr. Jason R. Dutton, an orthopedic surgeon. Dr. Dutton reported that appellant was injured at work on "January 11, 2018" moving the "C-arm" back and forth. He noted left shoulder pain and diagnosed AC joint arthrosis and calcific tendinitis, and opined that they were most likely preexisting conditions. On the March 22, 2018 Form CA-20, Dr. Dutton opined that the described employment activity of "moving large piece of equipment" had aggravated appellant's diagnosed condition(s).²

Appellant also submitted two e-mail exchanges dated January 17 and March 15, 2018. The subject line of the first e-mail was paygrade error. The subsequent e-mail exchange pertained to filing an OWCP/FECA claim noting that appellant had experienced difficulty attempting to file a report on January 17, 2018. On March 15, 2018 she learned that there was no record of her having previously filed for FECA benefits, despite earlier assurances from the Help Desk that her report had been successfully submitted.

On April 25, 2018 OWCP accepted appellant's claim for aggravation of left shoulder calcific tendinitis and aggravation of left shoulder primary osteoarthritis.

By separate decision dated April 25, 2018, OWCP denied appellant continuation of pay because she had not reported her January 9, 2018 injury on an OWCP-approved form within 30 days of the date of injury. It further noted that she filed her Form CA-1 on March 15, 2018.

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

² Dr. Dutton also provided a March 22, 2018 duty status report (Form CA-17) indicating that appellant could resume her regular, full-time duties effective January 17, 2018.

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

OWCP's 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 unavailable, 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 procedures provide that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contain 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

The Board finds that appellant has not met her burden of proof to establish eligibility for continuation of pay.

Appellant filed written notice of her traumatic injury (Form CA-1) on March 15, 2018, which was more than two months after her January 9, 2018 employment injury. Because she filed her claim on March 15, 2018, 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. Appellant reportedly experienced technical difficulties when attempting to electronically file her claim on January 17, 2018. There is no provision in FECA for excusing a late filing. Therefore, appellant is not entitled to continuation

³ 5 U.S.C. § 8118.

⁴ *Id.* at § 8122(a)(2).

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

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 2.807.5 (June 2012).

⁹ 5 U.S.C. § 8122(d)(3).

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

of pay.¹¹ Appellant also claims to have notified her supervisor of the injury within 24 hours. However, despite verbal notice being provided, there remains no evidence of her having filed a written notice prior to March 15, 2018. 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.¹²

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish eligibility for continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the April 25, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2019
Washington, DC

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

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

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

¹¹ *Id.*; see also *E.S.*, Docket No. 15-1800 (issued December 10, 2015).

¹² 20 C.F.R. § 10.210(a); *M.B.*, Docket No. 18-0959 (issued October 16, 2018).