

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

_____)
A.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Elkhorn, WI, Employer)
_____)

Docket No. 20-0942
Issued: February 14, 2022

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 27, 2020 appellant filed a timely appeal from December 30, 2019 and February 6, 2020 merit decisions 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 (COP).

FACTUAL HISTORY

On November 12, 2019 appellant, then a 41-year-old sales service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on October 7, 2019 she strained her left lower back when she grabbed a package that was not marked as "heavy" from the top of a pallet

¹ 5 U.S.C. § 8101 *et seq.*

and felt a twinge in her back while in the performance of duty. On the reverse side of the claim form, appellant's supervisor, Postmaster J.W., controverted her request for COP because notice of the injury had not been reported within 30 days, noting that the injury claim was not received until November 12, 2019.

In a narrative statement, appellant also contended that she injured her left buttock area and experienced numbness in left top of her toes, at the top of her left foot, in her left leg, and left knee as a result of the October 7, 2019 incident. She noted that she told coworkers about her injury at the time, and also informed her supervisor about her claimed injury upon his arrival to work.

Appellant submitted medical evidence in support of her claim.

OWCP, in a development letter dated November 25, 2019, informed appellant of the deficiencies of her claim. It advised her of the type of medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received additional medical evidence.

By decision dated December 30, 2019, OWCP accepted appellant's claim for lumbosacral radiculopathy at L5 also noted as lumbar disc herniation with radiculopathy and left foot drop also noted as weakness of the left extensor hallucis longus.

By separate decision of even date, OWCP denied appellant's claim for COP, finding that she had failed to report the October 7, 2019 employment injury on a form approved by OWCP within 30 days, as required. It advised her that the denial of COP did not affect her entitlement to compensation, and that she could, therefore, file a claim for compensation (Form CA-7) for lost wages due to her accepted employment injury.

OWCP continued to receive medical evidence.

On January 13, 2020 appellant requested reconsideration of the December 30, 2019 decision regarding COP.

In a January 6, 2020 letter, Postmaster J.W. contended that appellant had timely reported her work injury to management. He claimed that he failed to enter her accident in a timely manner. Postmaster J.W. related that he learned that his failure to timely enter the accident affected her claim. He maintained that it was his mistake and appellant should not be penalized.

OWCP continued to receive medical evidence.

By decision dated February 6, 2020, OWCP denied modification of its December 30, 2019 decision.

LEGAL PRECEDENT

Section 8118 of FECA² 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 after the injury.³ Claims that are timely under section 8122 are not necessarily timely under section 8118(a). FECA authorizes COP for an employee who has filed a valid claim for traumatic injury.⁴ Section 8118(a) makes COP 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 COP, notwithstanding prompt notice of injury.⁵

ANALYSIS

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

On November 12, 2019 appellant filed a claim for an October 7, 2019 traumatic injury. Because she did not file a written claim within 30 days from the date of injury, the time specified in sections 8118(a) and 8122(a)(2) of FECA,⁶ she is not entitled to COP. When an injured employee makes no written claim for a period of wage loss within 30 days, she is not entitled to COP, notwithstanding prompt notice of injury. Moreover, although appellant contended that she verbally notified her supervisor about her injury within the 30-day period, oral notice to the supervisor is insufficient to satisfy the requirements of 5 U.S.C. § 8118.⁷ Further, Postmaster J.W.'s contention in his January 6, 2020 letter that appellant timely reported her October 7, 2019 employment injury to management, but that he failed to enter it in a timely manner, does not establish the requisite notice.⁸ Because FECA makes no provision for an exception to the time limitation in section 8118(a), no exceptional or mitigating circumstance, including error by the

² *Supra* note 1 at § 8118.

³ *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁴ *Id.* at § 8118(a).

⁵ *L.S.*, Docket No. 16-0088 (issued June 10, 2016); *P.R.*, Docket No. 08-2239 (issued June 2, 2009). *See also W.W.*, 59 ECAB 533 (2008).

⁶ 5 U.S.C. §§ 8118(a), 8122(a)(2).

⁷ *See J.M.*, Docket No. 09-1563 (issued February 26, 2010); *R.J.*, Docket No. 08-2338 (issued June 9, 2009); *Ann M. Yelle*, Docket No. 98-2508 (issued March 9, 2000).

⁸ *See David C. English*, Docket No. 03-0495 (issued May 12, 2003).

employing establishment, can entitle a claimant to COP who has not filed a written claim within 30 days of the date of injury.⁹

Appellant did not submit written notice of injury on an approved form until November 12, 2019 more than 30 days after the October 7, 2019 employment injury, when she submitted Form CA-1.¹⁰ Therefore, the Board finds that she is not entitled to COP.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the December 30, 2019 and February 6, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 14, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Laura L. Harrison*, 52 ECAB 515 (2001). See also *S.C.*, Docket No. 10-0460 (issued January 26, 2011).

¹⁰ See *E.M.*, Docket No. 18-0454 (issued February 20, 2020); *Robert E. Kimzey*, 40 ECAB 762 (1989).