

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DANIEL E. TIMMONS JR. and U.S. POSTAL SERVICE,
POST OFFICE, Charleston, S.C.

*Docket No. 96-926; Submitted on the Record;
Issued January 15, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay because he failed to give written notice of his injury within the time specified by the Federal Employees' Compensation Act.

Section 8118 of the Act¹ 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 a traumatic injury with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."² Section 8122 provides that written notice of the injury shall be given within 30 days as specified in section 8119.³ Section 8119 requires, in pertinent part, that written notice of the injury shall be given to the employee's immediate superior within 30 days after the injury.⁴

In the present case, the Office has accepted that appellant, a postal employee, sustained a back strain on August 26, 1994. The Office, by decision dated December 22, 1995, denied appellant's request for continuation of pay benefits on the grounds that the claim was not timely filed.

The claim form of record indicates that such form was received by appellant's postmaster on July 26, 1995. While appellant alleges that he filed a claim on September 1, 1994, appellant has explained that the CA-1 of record was actually completed in 1995 when he questioned his postmaster as to why his medical bills had not been paid. The employing establishment and

¹ 5 U.S.C. § 8118(a); *see also* 20 C.F.R. § 10.201(a)(3).

² *Id.*

³ *See* 5 U.S.C. § 8122(a)(2).

⁴ 5 U.S.C. § 8119.

appellant's supervisor on the date of injury have indicated that no record exists that appellant filed a claim within 30 days of the August 26, 1994 injury. As the record does not substantiate that appellant provided written notice of injury within 30 days as specified in section 8119 of the Act, the Office properly denied continuation of pay benefits.

The decision of the Office of Workers' Compensation Programs dated December 22, 1995 is hereby affirmed.

Dated, Washington, D.C.
January 15, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member