

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THELMA MAE HARBIN and DEPARTMENT OF COMMERCE,  
CENSUS BUREAU, Jeffersonville, IN

*Docket No. 98-2287; Submitted on the Record;  
Issued April 26, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on January 27, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified by the Federal Employees' Compensation Act.

On March 2, 1998 appellant, then a 50-year-old staff clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on January 27, 1998 she smashed the tendons of her right ring finger while putting letters into a box. The employing establishment controverted the claim, noting that appellant did not inform her supervisor about the possible work-related injury until after she saw the doctor on February 27, 1998.

On April 16, 1998 the Office requested that appellant submit medical information in support of her claim within 30 days. Appellant did not file a timely response.

In a decision dated May 18, 1998, the Office found that the evidence supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, the Office denied appellant's claim, finding that appellant had not established fact of injury. The Office further found that appellant was barred from entitlement to continuation of pay as written notice of injury was not given within the required 30 days.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on January 27, 1998.

An employee seeking benefits under the Act<sup>1</sup> has the burden of establishing the essential elements of her claim including the fact that the individual is an "employee of the United States"

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury.<sup>2</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has established a traumatic injury in the performance of duty, it must first be determined whether “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup>

In the instant case, it is not contested that appellant established the first component of “fact of injury,” *i.e.*, that she experienced the work-related incident in the manner she stated. However, appellant has failed to establish the second component, *i.e.*, that this incident caused a personal injury. Despite a request by the Office to do so, appellant failed to timely submit any medical evidence in support of her claim. Accordingly, the Office properly found that appellant failed to establish fact of injury.<sup>6</sup>

The Board further finds that Office properly denied appellant’s claim for continuation of pay on the grounds that she failed to give written notice of her injury within the time specified by the Act.

Section 8118(a) of the Act<sup>7</sup> 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 [her] immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2)<sup>8</sup> of this title.” This latter section provides that “written notice of injury” shall be given within 30 days.<sup>9</sup> While a specific form is not required for filing of written

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<sup>2</sup> *Gene A. McCracken*, 46 ECAB 593, 596 (1995); *Elaine Pendelton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Gene A. McCracken*, *supra* note 2.

<sup>5</sup> *Geraldine Sutton*, 46 ECAB 1206, 1027 (1995); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> The Board notes that, subsequent to the Office’s May 18, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952). Appellant may wish to resubmit such evidence to the Office through the reconsideration process; *see* 5 U.S.C. § 8128; 20 C.F.R. § 10.138.

<sup>7</sup> 5 U.S.C. § 8118.

<sup>8</sup> 5 U.S.C. § 8122(a)(2).

<sup>9</sup> 20 C.F.R. § 10.203(b) of the implementing regulations provides that with respect to continuation of pay under 5 U.S.C. § 8118, the employing establishment shall controvert a claim if a written claim required by 5 U.S.C. § 8118(a) was not filed within 30 days after the date of injury.

notice, it is necessary that a filing contain words of claim or words which could be so construed.<sup>10</sup> The context of section 8122 makes clear that this means within 30 days of the date of injury.<sup>11</sup> There is no provision under the Act for excusing an employee's failure to file a claim for continuation of pay within 30 days of the employment injury.<sup>12</sup> As appellant alleged that her injury occurred on January 27, 1998 and she did not file her claim until March 2, 1998, appellant is not entitled to continuation of pay as written notice was not given within 30 days of the incident.

The decision of the Office of Workers' Compensation Programs dated May 18, 1998 is affirmed.

Dated, Washington, D.C.  
April 26, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>10</sup> *Karen A. Mueller*, 48 ECAB 138 (1996); *Myra Lenburg*, 36 ECAB 487 (1985).

<sup>11</sup> *Thomas A. Faber*, 50 ECAB \_\_\_\_\_ (Docket No. 97-2212, issued September 28, 1999).

<sup>12</sup> *Dodge Osborne*, 44 ECAB 849, 855 (1993).