

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PEDRO G. BAGUNAS and U.S. POSTAL SERVICE,  
POST OFFICE, Livermore, CA

*Docket No. 00-2544; Submitted on the Record;  
Issued August 1, 2002*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for continuation of pay as untimely.

On September 2, 1999 appellant, then a 45-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay (Form CA-1) alleging that, on May 1, 1999, while in the course of his duties, "something entered his right eye, causing infection and impairment." On the reverse of the form, appellant's supervisor did not indicate that appellant stopped working due to his alleged injury, and in fact, noted that appellant did not file notice of the alleged injury until after appellant was terminated.

On December 9, 1999 the Office accepted appellant's claim for corneal abrasion of the right eye.

By a second decision dated December 9, 1999, the Office denied appellant's claim for continuation of pay on the grounds that he did not file his claim within 30 days of May 1, 1999, the date of his alleged injury.

By letter dated January 6, 2000, appellant requested a review of the written record.

By order dated May 14, 2000, the Office affirmed the December 9, 1999 order denying appellant's request for continuation of pay.

On June 5, 2000 appellant requested reconsideration of the Office's May 14, 2000 order denying appellant's request for continuation of pay.

By order dated June 10, 2000, the Office denied appellant's June 5, 2000 request for reconsideration.

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that he failed to give written notice within 30 days, the time specified by the Federal Employees' Compensation Act.

Section 8118 of the Act<sup>1</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 his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title."<sup>2</sup> The context of section 8122 makes clear that this means within 30 days of the date of injury.<sup>3</sup> 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. Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.<sup>4</sup>

In the instant case, the Office received appellant's Form CA-1 on October 27, 1999, more than 30 days after the injury on May 7, 1999. Appellant contends on appeal that he failed to file the claim form within the 30-day time limit because as a new employee, he was unaware of the form. Appellant further contends that he gave written notice of his injury four days after the incident occurred. Appellant argues that his supervisor prevented him from filing a claim, by forcing him to sign a form waiving his right to file a claim, and that his supervisor withheld the proper forms.

The Board has held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitation provisions 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.<sup>5</sup> There is, therefore, 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. The fact that appellant may have been unaware of the applicable time limitation is not sufficient to toll the running of the 30-day filing requirement.<sup>6</sup> Furthermore, the fact that appellant's supervisor may have been aware of appellant's injury and did not assist him in filing the proper forms in a timely manner<sup>7</sup> does not provide a basis for granting continuation of pay.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8122(a)(2); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

<sup>3</sup> *Myra Lenburg*, 36 ECAB 487 (1985). See 20 C.F.R. § 10.201(a)(3); *George Harrell*, 29 ECAB 338 (1978).

<sup>4</sup> *Robert E. Kimzey*, 40 ECAB 762 (1989).

<sup>5</sup> *Dodge Osborne*; *William E. Ostertag*, *supra* note 2.

<sup>6</sup> *Robert E. Kimzey*, *supra* note 5.

<sup>7</sup> *Sandra N. Phillips*, 43 ECAB 311 (1991).

In the instant case, appellant is not entitled to continuation of pay because proper notice on a form approved by the Secretary of Labor, or other notice which contained words of claim, was not filed within 30 days of the injury.<sup>8</sup>

The decisions of the Office of Workers' Compensation Programs dated June 10 and May 14, 2000 and December 9, 1999 are hereby affirmed.

Dated, Washington, DC  
August 1, 2002

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> As stated previously, the Office accepted the claim for corneal abrasion. This decision concerns only continuation of pay and does not affect appellant's entitlement to compensation benefits.