

with a torn medial meniscus while lifting heavy boxes during an office move. Appellant delayed filing a claim for more than 30 days after the injury as she was unaware of its severity until November 1, 2006. She first notified the employing establishment of her injury claim on November 2, 2006. The Office accepted that appellant sustained a right knee sprain/strain with internal derangement and a torn medial meniscus.

In a January 26, 2007 telephone memorandum, the Office noted that appellant explained that she did not file a claim for the December 30, 2005 injury until November 4, 2006 as she was unaware of the torn medial meniscus until November 1, 2006.

By decision dated November 29, 2007, the Office denied appellant's claim for continuation of pay on the grounds that her claim was not made within 30 days of the December 30, 2005 injury.

LEGAL PRECEDENT

Section 8118¹ of the Federal Employees' Compensation Act² 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 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)³ 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.⁴

Claims that are timely under section 8122 are not necessarily timely under section 8118(a). Section 8118(a) makes continuation of pay contingent on the filing of a claim within 30 days of the injury. When an injured employee makes no claim for a period of wage loss within 30 days, she is not entitled to continuation of pay, notwithstanding prompt notice of injury.⁵ The Act makes no provision for exceptional or mitigating circumstances entitling a claimant to continuation of pay who has not filed a claim within 30 days of the injury.⁶

The Act's implementing regulations provide, in pertinent part, that to be eligible for continuation of pay, a claimant 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; and (3) Begin losing time

¹ 5 U.S.C. § 8118.

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8122(a)(2).

⁴ 5 U.S.C. § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

⁵ *Laura L. Harrison*, 52 ECAB 515 (2001).

⁶ *Id. William E. Ostertag*, 33 ECAB 1925 (1982).

from work due to the traumatic injury within 45 days of the injury.”⁷ The Act further authorizes continuation of pay of an employee who has filed a valid claim for traumatic injury.⁸

ANALYSIS

The Office accepted that appellant sustained a right knee injury on December 30, 2005. Appellant filed a notice of traumatic injury (Form CA-1) on November 4, 2006, more than 30 days after December 30, 2005. She acknowledged that she did not file a claim form prior to November 4, 2006. Thus, appellant is not entitled to continuation of pay as she did not file her traumatic injury claim within 30 days of the injury.

On appeal, appellant contends that because she filed a timely traumatic injury claim under section 8122 of the Act,⁹ her claim should also be considered timely for purposes of granting continuation of pay under section 8118 of the Act.¹⁰ However, timeliness under section 8122 does not confer timeliness under section 8118. The two standards are independent. A traumatic injury claim may be timely under section 8122 if filed more than 30 days after the injury, as in this case. But the 30-day time limitation for claiming continuation of pay under section 8118(a) is absolute.¹¹ There are no provisions for extending or waiving this 30-day time limit.¹² As appellant did not file her traumatic injury claim within 30 days of the December 30, 2005 injury, she is not entitled to continuation of pay.

CONCLUSION

The Board finds that appellant is not entitled to continuation of pay. She did not file a traumatic injury claim within 30 days of the accepted injury.

⁷ 20 C.F.R. § 10.205(a)(1)-(3). *See also Carol A. Lyles*, 57 ECAB 265 (2005).

⁸ 5 U.S.C. § 8118(a).

⁹ 5 U.S.C. § 8122(a).

¹⁰ 5 U.S.C. § 8118.

¹¹ 5 U.S.C. § 8118(a).

¹² *Laura L. Harrison*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 29, 2007 is affirmed.

Issued: October 3, 2008
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board