

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

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**H.H., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Loma Linda, CA, Employer**

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**Docket No. 13-218  
Issued: April 5, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On November 7, 2012 appellant filed a timely appeal of a July 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his claim for continuation of pay. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 OWCP properly denied appellant's claim for continuation of pay.

On appeal, appellant contends that he did not file a workers' compensation claim or request continuation of pay within 30 days of his injury because he was misinformed about the filing of a claim. Following his February 6, 2012 injury, he was advised by his postmaster that he could not file a claim since he had not clocked in at work before the accident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 20, 2012 appellant, then a 59-year-old city carrier, filed a traumatic injury claim, Form CA-1, alleging that at 7:25 a.m. on February 6, 2012 he sustained a right thumb sprain due to an inability to safely ride his motorcycle. He stopped work on February 7, 2012. Appellant's regular work hours were from 7:30 a.m. to 4:00 p.m.

The employing establishment controverted the claim, contending that appellant's injury was not reported on a Form CA-1 within 30 days following the injury. It received notice of the claim on April 23, 2012. The employing establishment contended that appellant was not in the performance of duty at the time of the incident.

On June 18, 2012 appellant further described the February 6, 2012 incident. While getting ready to park his motorcycle in the employee parking lot, it slipped on loose gravel causing him to fall and dislocate his right thumb which required medical care. At the time of injury, appellant was dressed in his postal uniform and was within five minutes of clocking in to report for duty. He reported his injury to the postmaster on the day of the injury.

By letter dated July 2, 2012, OWCP accepted appellant's claim for a closed dislocation and sprain of the right thumb. It found that he was within the performance of duty since he was sufficiently within the time frame for beginning work (five minutes) and was on the employing establishment's premises in the parking lot at the time of injury. OWCP found that appellant was not entitled to continuation of pay, however, on the grounds that his claim was not filed within 30 days of the date of injury. It advised him that "If your injury results in lost time from work, you may claim compensation using Form CA-7."

## **LEGAL PRECEDENT**

Section 8118(a) of FECA authorizes 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 or her 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> This latter section provides that written notice of injury shall be given within 30 days.<sup>3</sup> The context of section 8122 makes clear that this means within 30 days of the injury.<sup>4</sup>

OWCP regulations provide, in pertinent part, that to be eligible for continuation of pay, an employee 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 (but if that form is not available, using

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<sup>2</sup> *Id.* at § 8118(a).

<sup>3</sup> *Id.* at § 8122(a)(2).

<sup>4</sup> *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.<sup>5</sup>

The Board has held that section 8122(d)(3) of FECA,<sup>6</sup> which allows OWCP to excuse failure to comply with the time limitation provision 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. Thus, there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.<sup>7</sup>

### **ANALYSIS**

Appellant filed a written notice of injury on April 20, 2012 more than two months after his injury on February 6, 2012. The Board notes that his oral notice of injury to his supervisor on February 6, 2012 is not determinative of whether he is entitled to continuation of pay under section 8118(a).<sup>8</sup> There is no provision in FECA for excusing a late filing and appellant is not entitled to continuation of pay.<sup>9</sup> This is so regardless of any failure on the part of the employing establishment<sup>10</sup> or the local FECA representative. The Board finds that appellant was not entitled to continuation of pay as he did not file within the requisite 30 days from the date of injury.

Appellant argued on appeal that he did not file a workers' compensation claim or request continuation of pay within 30 days of his injury because he was misinformed by his postmaster that he could not file a claim since he had not clocked in at work before the accident. As noted, there is no excuse for failing to file notice of injury within 30 days of its occurrence. As OWCP noted, its decision denying continuation of pay does not affect appellant's ability to file a claim for wage-loss benefits through a Form CA-7, for any disability or period of wage loss caused by the accepted employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant is not entitled to continuation of pay.

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<sup>5</sup> 20 C.F.R. § 10.205(a)(1-3). *See also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

<sup>6</sup> 5 U.S.C. § 8122(d)(3).

<sup>7</sup> *Dodge Osborne*, 44 ECAB 849, 855 (1993).

<sup>8</sup> *See J.M.*, *supra* note 5.

<sup>9</sup> *Supra* note 7.

<sup>10</sup> *See* 20 C.F.R. § 10.211 (the employer's responsibilities in continuation of pay cases).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 5, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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