

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

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<b>R.P., Appellant</b>	)	
	)	
<b>and</b>	)	
	)	<b>Docket No. 15-0714</b>
	)	<b>Issued: July 13, 2015</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>IMMIGRATION &amp; CUSTOMS</b>	)	
<b>ENFORCEMENT, San Diego, CA, Employer</b>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 3, 2015 appellant filed a timely appeal from a December 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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 appellant established that he was entitled to continuation of pay.

**FACTUAL HISTORY**

On October 21, 2014 appellant, then a 53-year-old immigration enforcement agent, filed a traumatic injury claim alleging that he sustained a neck injury in the performance of duty on September 16, 2014. He claimed that a supervisor snuck up behind him and placed him in a

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

chokehold while he was sitting at his computer. Appellant's supervisor stated that notice of the claimed injury was received on October 21, 2014. He did not indicate that appellant stopped work.

In an October 24, 2014 report, Dr. Mark Selecky, a Board-certified orthopedic surgeon, advised that appellant was one month post-traumatic cervical sprain/strain with possible aggravation of degenerative disc disease and preexisting degenerative changes. He recommended physical therapy and advised that appellant could perform regular duties as tolerated.<sup>2</sup>

By decision dated December 3, 2014, OWCP accepted the claim for neck sprain. An attachment to the decision informed appellant how to seek medical authorization. It also advised him how to claim wage-loss compensation and how to initiate a leave buyback request with his employing establishment.

By decision dated December 4, 2014, OWCP denied appellant's request for continuation of pay because his injury was not reported within 30 days following the injury. The decision stated that it only concerned entitlement to continuation of pay and did not affect his entitlement to other compensation benefits. OWCP informed appellant of the process for claiming wage-loss compensation.

### **LEGAL PRECEDENT**

Section 8118 of FECA<sup>3</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 traumatic injury with his or 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) 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.<sup>4</sup> Claims that are timely under section 8122 are not necessarily timely under section 8118(a). FECA authorizes continuation of pay for an employee who has filed a valid claim for traumatic injury.<sup>5</sup> Section 8118(a) makes continuation of pay contingent on the filing of a written claim within 30 days of the injury. When an injured employee makes no written claim for a period of wage loss within 30 days, he or she is not entitled to continuation of pay, notwithstanding prompt notice of injury.<sup>6</sup>

Section 10.205 of OWCP regulations provide in pertinent part that to be eligible for continuation of pay, a person must: (1) have a traumatic injury which is job related and the

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<sup>2</sup> Dr. Selecky also noted that appellant was being treated under a separate claim for an injury to his left hand and to his lumbar spine that occurred around July 2013. The Board notes that this other claim is not before the Board on the present appeal.

<sup>3</sup> 5 U.S.C. § 8118.

<sup>4</sup> *Id.* at § 8119(a), (c). *See also Gwen Cohen-Wise*, 54 ECAB 732 (2003).

<sup>5</sup> *Id.* at § 8118(a).

<sup>6</sup> *See P.R.*, Docket No. 08-2239 (issued June 2, 2009). *See also W.W.*, 59 ECAB 533 (2008).

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 from work due to the traumatic injury within 45 days of the injury.<sup>7</sup>

### **ANALYSIS**

On October 21, 2014 appellant filed a claim for a September 16, 2014 traumatic injury. Because he did not file his claim within 30 days from the date of injury, the time specified in section 8118(a) and 8122(a)(2) of FECA, the Board finds that he is not entitled to continuation of pay. The record contains no evidence of an earlier written claim for a traumatic injury.

On appeal appellant argues that he submitted sufficient evidence for acceptance of his claim. The Board notes that OWCP did accept his claim for neck sprain. However, OWCP denied continuation of pay because appellant did not submit written notice of injury until October 21, 2014. This was more than 30 days after the September 16, 2014 employment injury. OWCP December 4, 2014 decision pertains only to continuation of pay and does not preclude appellant from claiming compensation for wage loss or from seeking medical benefits for his accepted condition.

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 OWCP properly determined that appellant was not entitled to continuation of pay.

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<sup>7</sup> 20 C.F.R. § 10.205(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 13, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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