

ISSUE

The issue is whether appellant has met her burden of proof to establish entitlement to continuation of pay (COP) for the period February 27 through April 13, 2019.

FACTUAL HISTORY

On April 3, 2019 appellant, then a 53-year-old human resource tech, filed a traumatic injury claim (Form CA-1) alleging that on February 27, 2019 she sustained an injury to her knee and left arm when a coworker stepped back into her causing her to trip, landing hard onto a cement floor on her left side while in the performance of duty. On the reverse side of the claim form, the employing establishment advised that notice of her injury was first received on April 3, 2019 and controverted COP, asserting that she did not file her claim within 30 days of the date her injury occurred. Appellant stopped work on April 4, 2019.

In an April 9, 2019 diagnostic report, Dr. Nicholas Iwasko, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's left knee, finding a bucket-handle tear within the posterior horn of the medial meniscus, generalized stage one chondromalacia, a grade 1 sprain of the medial collateral ligament complex and a small knee effusion.

In a development letter dated April 23, 2019, OWCP informed appellant of the deficiencies of her claim and requested additional medical evidence. It explained that she had not submitted a physician's opinion as to how her injury resulted in a diagnosed conditions. OWCP afforded appellant 30 days to respond.

In an undated medical report, Dr. Brian Rogers, an osteopath Board-certified in occupational medicine, reviewed the history of appellant's February 27, 2019 employment injury and Dr. Iwasko's subsequent MRI scan of her left knee. He diagnosed a bucket-handle tear of the medial meniscus of the left knee, a sprain of the medial collateral ligament of the left knee, a contusion of the left knee and left knee chondromalacia. Dr. Rogers opined that appellant's February 27, 2019 employment injury caused her to sustain an inversion torqueing injury of the left knee.

On May 30, 2019 OWCP accepted appellant's traumatic injury claim for a left knee contusion and a sprain of the medial collateral ligament of the left knee.

By decision dated August 15, 2019, OWCP denied appellant's claim for continuation of pay for the period beginning April 4, 2019, finding that she failed to report the February 27, 2019 employment injury on a form approved by OWCP within 30 days, as required.

In an August 8, 2019 medical report, Dr. Rogers reevaluated appellant's left knee and diagnosed a sprain of an unspecified collateral ligament of the left knee and a left knee contusion.

In an undated medical note, Dr. Rogers referred appellant to physical therapy for her left knee from September 3 to November 15, 2019.

On September 17, 2019 appellant requested reconsideration of OWCP's August 15, 2019 decision. In an attached letter of even date, she explained that she made several attempts to file her claim online prior to the deadline but claimed she was unable to because of an administrative

issue. Appellant asserted that the employing establishment did not use paper CA-1 and CA-7 forms for filing and that employees were required to utilize the online system to file their claims.

Appellant submitted a September 9, 2019 statement where J.H., appellant's coworker, alleged that appellant contacted her by phone to request assistance with obtaining access to OWCP's claim. J.H. noted that she was frustrated because she had unsuccessfully attempted multiple times. Appellant also attached an undated statement in which S.S., appellant's coworker, attested that she made several attempts to file an electronic claim during the week of March 25, 2019 before she was eventually able to file her claim appropriately.

Appellant submitted physical therapy notes dated from September 3 to November 15, 2019 in which she received therapy treatments relating to her left knee injury.

By decision dated March 23, 2020, OWCP denied modification of its August 15, 2019 decision.

OWCP continued to receive evidence. In a September 9, 2019 memorandum, N.T., appellant's supervisor, acknowledged that appellant notified her of her traumatic injury within 30 days and of her intent to file a claim with OWCP. On March 26 and 27, 2019 she received notice from appellant that she was attempting to file her claim and that she could not access OWCP's system. N.T. claimed that appellant sustained a traumatic injury at work that caused a loss of labor hours and that she provided "verbal and written" notice of her injury within 30 days due to her not being able to file an electronic Form CA-1.

In an undated statement, P.C., an administrative assistant, noted that from March 25 to 29, 2019 appellant made multiple unsuccessful attempts to file her claim online because the employing establishment did not use paper claim forms. She contacted OWCP on March 29, 2019 and appellant was then provided with a temporary password on April 4, 2019, which she then used to access the online database and file her claim.

Appellant also submitted a March 12, 2020 medical report in which Dr. Rogers continued to treat her with regard to her diagnosed left knee conditions.

On April 13, 2020 appellant requested reconsideration of OWCP's March 23, 2020 decision.

In an April 16, 2020 medical report, Dr. Rogers continued to treat appellant for her left knee conditions. In a medical note of even date, he referred her to physical therapy from April 20 to June 9, 2020.

By decision dated July 7, 2020, OWCP denied modification of its March 23, 2020 decision.

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.⁴ This latter section provides that written notice of injury shall be given within 30 days.⁵ The context of section 8122 makes clear that this means within 30 days of the injury.⁶

OWCP's 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 unavailable, using 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.⁷

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury.⁸ OWCP's procedures provide that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contain words of claim, can be used to satisfy timely filing requirements.⁹

The Board has held that section 8122(d)(3) of FECA,¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish entitlement for COP for the period February 27 through April 13, 2019.

Appellant filed written notice of her traumatic injury (Form CA-1) on April 3, 2019, which was more than 30 days after her February 27, 2019 employment injury. Because she filed her claim on April 3, 2019, the Board finds that it was not filed within 30 days of the injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Appellant reportedly experienced technical difficulties when attempting to electronically file her claim in March 2019. However, there is no provision in FECA for excusing such a late filing.¹² Additionally, in her September 9, 2019

⁴ 5 U.S.C. § 8118.

⁵ *Id.* at § 8122(a)(2).

⁶ *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁷ 20 C.F.R. § 10.205(a)(1-3); *see also J.M.*, Docket No. 09-1563 (issued February 26, 2010).

⁸ *Id.* at § 10.210(a).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.5 (June 2012).

¹⁰ 5 U.S.C. § 8122(d)(3).

¹¹ *Dodge Osborne*, 44 ECAB 849, 855 (1993).

¹² *Id.*; *see also E.S.*, Docket No. 15-1800 (issued December 10, 2015).

statement, N.T. claimed that appellant provided both verbal and written notice of her traumatic injury and intent to file a claim with OWCP within 30 days. However, despite verbal notice being provided to her, there remains no evidence of appellant having filed a written notice prior to April 3, 2019. The Board, therefore finds that OWCP properly denied COP as appellant did not file her claim within the requisite 30 days from the date of injury.¹³

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to COP for the period February 27 through April 13, 2019.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

¹³ 20 C.F.R. § 10.210(a); *J.S.*, Docket No. 18-1086 (issued January 17, 2019).