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BETTY J. TURMAN, Appellant)	
)	
and)	Docket No. 04-1133
)	Issued: November 26, 2004
DEPARTMENT OF THE TREASURY,)	
INTERNAL REVENUE SERVICE,)	
Memphis, TN, Employer)	
)	

Case Submitted on the Record

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

On March 22, 2004 appellant filed a timely appeal of a merit decision of the Office of Workers' Compensation Programs dated March 5, 2004, which rejected her claim for continuation of pay. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the continuation of pay issue.

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

On September 12, 2003 appellant, then a 58-year-old accounting technician, filed a traumatic injury claim, Form CA-1, alleging that on August 6, 2003 as she reached to pick up an umbrella from the floor, her chair tipped over and rolled out from under her. She fell to the floor, hitting her bottom and right hip, knee and leg. Appellant stopped work on August 7, 2003

and returned on August 13, 2003. Her supervisor was not present that day and, on August 6, 2003, appellant filled out an employing establishment internal safety Form 9154 reporting the incident. The form noted the date of the incident and the circumstances and the time lost from work. Appellant's supervisor completed the form on August 7, 2003, but no Form CA-1 or CA-2 was completed contemporaneous with the incident.

On August 8, 2003 the employing establishment issued appellant a Form CA-16 authorizing medical treatment. It was completed on September 15, 2003 by Dr. Tina K. Burns, a Board-certified family practitioner, who noted the date of injury as August 6, 2003 and noted that appellant was disabled for work from August 8 to 12, 2003 due to a contusion of her right hip, leg and knee.

On August 8, 2003 appellant also completed a family practice group information form which described how the injury occurred and identified the employer. No words of claim were included.

By decision dated October 3, 2003, the Office denied appellant's claim for continuation of pay, finding that the claim was not timely filed within the 30-day time limitation period specified in section 8122(a)(2) and was not reported "on a form approved by the Secretary of Labor...."¹

On October 17, 2003 appellant requested a review of the written record.

On January 22, 2004 the employing establishment controverted appellant's continuation of pay request noting that she was allegedly injured on August 6, 2003, but did not seek medical treatment until September 8, 2003 and filed a Form CA-1, notice of traumatic injury on September 12, 2003, neither of which were within the 30-day time limitation period for requesting continuation of pay.

On February 3, 2004 Glenda Cox, appellant's manager, indicated that she was not at work on the date of the work incident and noted that another manager supposedly entered the report of the accident into the computer program. Ms. Cox noted that she did not realize, until September 9, 2003 when a physician's office called regarding a claim number, that the claim had not been properly filed. She noted that the proper paperwork was not filed until September 12, 2003, due to administrative error.

By decision dated March 5, 2004, an Office hearing representative reviewed the written record and affirmed the October 3, 2003 decision, finding that appellant did not file a claim for injury within 30 days of its occurrence and was not entitled to continuation of pay.

LEGAL PRECEDENT

Section 8118 of the Federal Employees' Compensation Act provide for payment of continuation of pay of an employee, "who has filed a claim for a period of wage loss due to

¹ See 5 U.S.C. § 8118(a).

traumatic injury with his [or her] immediate superior on a form approved by the Secretary of Labor within the time specified by 5 U.S.C. § 8122(a)(2) of this title,” for a period not to exceed 45 days.² Section 8122(a)(2) provide that “written notice of injury or death as specified in section 8119 of this title was given within 30 days.” Section 8119 requires that written notice of the injury shall be given to the employee’s immediate superior within 30 days after the injury.³

Continuation of pay is 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. While a specific form is not required for filing of written notice, it is necessary that a filing contain words of claim or words which could be so construed.⁴

The Federal (FECA) Procedure Manual notes that the employee must provide a written report on Form CA-1 to the employing establishment within 30 days of the injury.⁵ Other Office-approved forms, such as CA-2 or CA-7 forms, which contain words of claim, may be used to satisfy timely filing requirements. The form must show whether the employee wishes to use sick leave or annual leave or request continuation of pay for the period of disability.

The procedure manual notes that the employee submission of a sick leave slip or any form of leave request other than Form CA-1 or CA-2 to the employing establishment may not be construed as an election of leave for disability resulting from a traumatic injury.

Section 8122(d)(3) of the Act, which allows the Office 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.⁶ The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.⁷ There is 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.⁸

ANALYSIS

Appellant alleged an injury on August 6, 2003, but did not file a claim until September 12, 2003. The Board finds that her Form CA-1 claim for traumatic injury was not timely filed within 30 days of the alleged injury. To be timely for purposes of receiving

² 5 U.S.C. § 8118(a)(2).

³ 5 U.S.C. § 8122(a)(1) and (2); *see Dodge Osborne*, 44 ECAB 849 (1993).

⁴ *See Dodge Osborne*, *supra* note 3.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7(a) (March 2004).

⁶ *Id.*

⁷ *See William E. Ostertag*, 33 ECAB 1925, 1932 (1982); *Dodge Osborne*, *supra* note 3.

⁸ *Robert E. Kimzey*, 40 ECAB 762, 764 (1989); *Patricia J. Kelsesky*, 35 ECAB 549, 551 (1984).

continuation of pay, a claim for traumatic injury must be filed in writing on a form approved by the Secretary of Labor within the 30-day time limitation period specified by the Act.⁹ Appellant's notice of traumatic injury was untimely filed at 35 days post injury, 5 days beyond the 30-day time limitation period specified in 5 U.S.C. 8118(a). It was therefore untimely filed.

On August 6, 2003, the date of the incident, appellant noted that she had filled out an employing establishment internal safety reporting Form 9154, noting the date and circumstances of the incident. Her supervisor completed the form on August 7, 2003 noting that appellant would lose five workdays. No words of claim appear on the form nor was there any indication given that a claim for an employment injury was being filed regarding the August 6, 2003 employment incident. This form has not been approved by the Secretary of Labor for the purposes of notifying the Office and the employing establishment that a claim for traumatic injury is being made. The Board finds that the completed employing establishment safety form is not adequate to convey to the Office or the employing establishment that an employment injury is being claimed.

Appellant also claimed that on August 6, 2003 a Form CA-16 had been issued by the employing establishment within the time limitation period, which demonstrated an employment injury that day. The Form CA-16 was completed by Dr. Burns, who diagnosed right hip, leg and knee contusion and indicated that she would be out of work for several days. The Board finds that the Form CA-16 authorization for medical treatment does not contain words of claim noting that an employment injury is being claimed, nor is the form approved by the Secretary of Labor for that purpose. Therefore, it cannot be considered as notice of a claim for a traumatic injury to the Office or the employing establishment for continuation of pay purposes.

The family practice group medical information sheets were also completed by appellant on August 8, 2003, but these documents also lack words of claim, indicating that a claim for an employment injury is being made regarding the August 6, 2003 incident and are not approved by the Secretary of Labor for continuation of pay purposes. Therefore, the Board finds that these forms were inadequate to put the Office and the employing establishment on notice that a claim for an employment injury was being made.

In *Laura L. Harrison*,¹⁰ the Board found that an AFMC Form 12, a record of injury/illness, signed by the employee's supervisor and which noted her identity, the date and time of the accident, how it happened and the course and nature of the injury, was not a claim for wage loss approved by the Secretary of Labor and was, therefore, not sufficient to put the employing establishment on notice that a claim for wage loss was being made. The Form CA-1 was the approved form for such notification. As appellant did not file a Form CA-1 until September 12, 2003 which was more than 30 days after the alleged incident, she is not entitled to continuation of pay.

⁹ See 5 U.S.C. § 8122(a)(2).

¹⁰ 52 ECAB 515 (2001).

Appellant argues on appeal that she should not be penalized because her claim was not electronically filed by the employing establishment in a timely manner. Although the employee establishment acknowledged the late reporting of this claim, the Office's regulation and procedures require the completion of an Office approved form, such as a CA-1, CA-2 or CA-7, with the appropriate words of claim or words of claim that could be so construed, to establish a claim for continuation of pay.¹¹ This requirement is not discretionary and must be followed for receipt of continuation of pay. The Board notes that there are no provisions for exception to the 30-day filing requirement for continuation of pay, either for "exceptional circumstances" or lack of actual knowledge of the seriousness of the injury. The Board notes that the "exceptional circumstances" provision of section 8122(d)(3), which may excuse the untimely filing of a claim for three years for compensation under section 8122(a) and (b), is not applicable to section 8118(a).¹² Because the Act makes no provision for the time limitation in section 8118(a), the Board finds that no exceptional or mitigating circumstances, including error by the employing establishment such as acknowledged in the late reporting of this claim due to an internal miscommunication regarding computer entries, can entitle a claimant to continuation of pay who has not filed a claim within 30 days of the injury.¹³

Appellant did not submit the appropriate form for continuation of pay until after the 30-day time limitation period had expired. She is not entitled to continuation of pay.

CONCLUSION

The Board finds that the Office properly denied appellant's claim for continuation of pay as untimely filed.

¹¹ See 20 C.F.R. § 10.205(a)(2) which provides that for an individual to be entitled to continuation of pay, that individual must: "File Form CA-1 within 30 days of the date of injury, (but if that form is not available, using another form would not alone preclude receipt)." See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Continuation of Pay and Initial Payments*, Chapter 2.807.7a(1) (March 2004), which provides that another approved Office form, such as a CA-2, CA-2a and CA-7, which contains words of claim can be used to satisfy timely filing requirements.

¹² See *William E. Ostertag*, *supra* note 7.

¹³ *Loretta R. Celi*, 51 ECAB 560 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 5, 2004 is hereby affirmed.

Issued: November 26, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member