

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RONALD MYATT and U.S. POSTAL SERVICE,
POST OFFICE, Lake Michigan, MI

*Docket No. 98-613; Submitted on the Record;
Issued August 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Federal Employees' Compensation Act.¹

On March 7, 1997 appellant, then a 48-year-old postmaster, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on January 23, 1997 he strained his back while shoveling snow from the dock area at the employing establishment. Appellant did not immediately stop work. On September 9, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for a lumbosacral strain.

In a separate decision dated September 9, 1997, the Office determined that appellant was not entitled to continuation of pay during his absence from work due to his January 23, 1997 employment injury because notice of his claim was provided on February 27, 1997, which was more than 30 days after the date of the injury.² The Office noted that appellant could submit a claim for wage loss by filing a Form CA-7.

The Board finds that appellant's claim for continuation of pay is barred by the time limitation provision of 5 U.S.C. § 8118 of the Act.

Section 8118³ of the Act provides for continuation of pay, not to exceed 45 days, to an employee "who has filed a claim with his immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2)⁴ of this title." The latter

¹ 5 U.S.C. §§ 8101-8193.

² The Office actually noted that appellant gave written notice on February 25, 1997. However, this appears to be a typographical error as appellant's CA-1 form clearly states that the date of notice is February 27, 1997.

³ 5 U.S.C. § 8118.

⁴ 5 U.S.C. § 8122(a)(2).

section provides that written notice of injury shall be given “within 30 days.” The context of section 8122 makes clear that this means within 30 days of the injury.⁵

Appellant filed a notice of traumatic injury and claim for continuation of pay/compensation on February 27, 1997. As this was more than 30 days after the January 23, 1997 injury, the claim for continuation of pay is barred by the applicable time limitation provision.

On appeal, appellant contends that he did not file his claim within 30 days of the January 23, 1997 injury because he was only following the employing establishment’s policy. In support, appellant argues that since he did not initially believe that the injury warranted an accident report, he “made notes of the incident and placed them in my desk drawer.” Appeal letter dated November 21, 1997. It was only after his condition became more severe that, on February 27, 1997, he contacted the district safety officer.

The Board has held that the responsibility for filing a claim rests with the injured employee.⁶ The Board has also held that section 8122(d)(3) of the Act, which allows the Office to excuse failure to comply with the time limitations provision for filing a claim for compensation because of “exceptional circumstances,” is not applicable to section 8118(a) which sets forth the filing requirements of continuation of pay. There is, therefore, no provision in the Act for excusing an employee’s failure to file a claim for continuation of pay within 30 days of the employment injury.⁷ The rationale for this finding is set forth fully in the Board’s decision in *William E. Ostertag*.⁸ Thus, since appellant filed the Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation more than 30 days after the January 23, 1997 incident, his claim for continuation of pay is barred by the applicable time limitation provision.

The decision does not affect appellant’s possible entitlement to appropriate compensation in the form of medical benefits or wage-loss benefits.

⁵ *Theresa Samilton*, 40 ECAB 955 (1989); *George A. Harrell*, 29 ECAB 338 (1978).

⁶ *Dodge Osborne*, 44 ECAB 849, 854-55 (1993).

⁷ *Id.*

⁸ 33 ECAB 1925 (1982).

The September 9, 1997 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 6, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member