

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

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**F.B., Appellant**

**and**

**DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE,  
Philadelphia, PA, Employer**

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**Docket No. 07-1470  
Issued: November 20, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 8, 2007 appellant filed a timely appeal from a May 30, 2006 merit decision of the Office of Workers' Compensation Programs that denied her claim for continuation of pay. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this claim.

**ISSUE**

The issue is whether the Office properly denied appellant's claim for continuation of pay on the grounds that written notice of injury was not filed within 30 days of the date of the injury.

**FACTUAL HISTORY**

On May 3, 2005 appellant, then a 32-year-old tax examiner, electronically filed a traumatic injury claim stating that she injured her "whole left side, knee, ankle, back, wrist and shoulder," when she slipped on ice at the employing establishment on February 24, 2005. She stopped work on February 25, 2005 and did not return. Appellant's supervisor indicated that

notice of the injury was received on May 3, 2005. She submitted medical reports in support of her claim.

In a July 2, 2005 memorandum of a telephone conversation between appellant and a claims examiner, the Office noted that she did not file her traumatic injury claim until more than two months after the alleged injury. When asked for an explanation concerning the delay, appellant stated that the employing establishment had tried to file the claim but was unable to do so due to computer problems. The claims examiner requested that appellant “have her employer submit a statement which supports this claim.”

In an August 8, 2005 statement, Troy D. Billups, a human resources specialist with the employing establishment, verified that appellant notified her supervisor of her injury on February 24, 2005, the date of claimed injury, but that the claim was not filed until May 30, 2005. He also stated: “The electronic (SHIMS) system would not let me EDI the claim with the date February 24, 2005 as the date notice was received.” Mr. Billups noted that he was enclosing a copy of the original CA-1 claim form. Appellant signed the original handwritten copy of the claim form and dated the form May 3, 2005. Her supervisor signed the claim form on May 3, 2005 and indicated that notice was received on February 24, 2005.

By decision dated August 31, 2005, the Office denied appellant’s traumatic injury claim. On September 26, 2005 appellant requested a review of the written record and submitted medical evidence.

By decision dated January 6, 2006, the hearing representative vacated the August 31, 2005 decision and directed the Office to refer her for a second opinion examination. On March 6, 2006 the Office referred appellant, together with a statement of accepted facts, to Dr. Anthony Salem, a Board-certified orthopedic surgeon, for a second opinion.

By decision dated May 30, 2006, the Office accepted appellant’s claim for lumbosacral strain and authorized six weeks of disability compensation payments.

In a May 30, 2006 decision, the Office also denied appellant’s request for continuation of pay on the grounds that the claim was not filed until more than 30 days after the traumatic incident.<sup>1</sup>

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<sup>1</sup> The record also reflects that the Office issued a third decision on that day, denying compensation after April 8, 2005, based on Dr. Salem’s conclusion that appellant’s disability due to her accepted lumbosacral strain would cease after six to eight weeks. However, on July 24, 2006 the Office found a conflict in the medical evidence concerning whether appellant’s current disability is related to her February 24, 2005 work injury. The record reflects that the Office is currently in the process of developing the medical evidence on this issue. The Board notes that this matter is in an interlocutory posture and is not before the Board on the present appeal. See 20 C.F.R. § 501.2(c).

## LEGAL PRECEDENT

The Federal Employees' Compensation Act<sup>2</sup> and its implementing regulations<sup>3</sup> provide for the continuation of pay (COP) in certain circumstances. Specifically, section 8118(a)<sup>4</sup> provides for continuation of pay not to exceed 45 pays, to an employee "who has filed a claim for a period of wage loss due to traumatic injury with his 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 shall be given in writing within 30 days after the injury.<sup>5</sup> Section 10.210(a) of the implementing federal regulations<sup>6</sup> provides in pertinent part: "An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for COP. The employee must: (a) [c]omplete and submit Form CA-1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred." Therefore, to be entitled to continuation of pay, an employee must file a claim on an appropriate form within 30 days after the injury.<sup>7</sup>

## ANALYSIS

Appellant electronically filed a traumatic injury claim, the appropriate form to claim continuation of pay, on May 3, 2005 for an injury occurring on February 24, 2005. As this claim was filed more than 30 days after the February 24, 2005 employment injury, appellant's claim for continuation of pay is barred by the time limitation provisions of section 8118(a) of the Act.

In a July 10, 2005 conversation with the Office, appellant stated that the employing establishment attempted to file the claim earlier but was unable to do so due to computer problems. The Office requested that appellant's employer provide a statement verifying this. On August 8, 2005 Mr. Billups informed the Office that appellant's supervisor had received notice of the injury on February 24, 2005, the date of injury, but that the claim was not filed until May 3, 2005. He explained, the computer system would not allow him to enter February 24, 2005 as the date notice was received. A version of the CA-1, completed in handwriting, was submitted. This version of the CA-1 was also signed by appellant and the supervisor on May 3, 2005 and the supervisor indicated that she had notice on February 24, 2005. Thus, while appellant's supervisor had notice of the injury on February 24, 2005, she did not state that appellant gave written notice on that date or within 30 days of the injury. Thus the record supports that, while appellant gave notice of her injury on February 24, 2005, she did provide written notice within 30 days after the injury of February 24, 2005.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 20 C.F.R. §§ 10.205, 10.220.

<sup>4</sup> 5 U.S.C. § 8118(a).

<sup>5</sup> 5 U.S.C. § 8122(a)(2).

<sup>6</sup> 20 C.F.R. § 10.210(a).

<sup>7</sup> *Robert E. Kimzey*, 40 ECAB 762 (1982); *Sylvia P. Blackwell*, 35 ECAB 811 (1984); *Patricia J. Kelesky*, 35 ECAB 549 (1984).

The Board notes that there are no provisions for exception to the 30-day filing requirement for continuation of pay for either exceptional circumstances or lack of actual knowledge of the seriousness of the injury. As 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, the Office properly denied appellant's claim for continuation of pay.<sup>8</sup>

**CONCLUSION**

The Board finds that the Office properly denied appellant's claim for continuation of pay on the grounds that written notice of injury was not filed within 30 days of the date of the injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 30, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>8</sup> *Loretta R. Celi*, 51 ECAB 560 (2000).