

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

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T.B., Appellant)	
)	
and)	Docket No. 17-0676
)	Issued: July 24, 2017
U.S. POSTAL SERVICE, POST OFFICE,)	
Galvin, WA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 3, 2017 appellant filed a timely appeal from an August 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant's claim for compensation was filed within the applicable time limitation provisions of FECA.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant has submitted new evidence on appeal. However, the Board cannot consider this evidence as its review of the case is limited to the evidence of record which was before OWCP at the time of its final decision. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 30, 2016 appellant, then a 65-year-old former post master, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 1998, she was forced to work beyond her physical limitations. She contended that she had to lift up to 70 pounds, stand for hours, and move boxes from counter to desk. Appellant indicated that this resulted in a lumbar laminectomy and decompression at L4-5 and L5-S1, permanent partial impairment to her left leg, and foot drop. Appellant also noted severe spasms to her back and legs. The employing establishment controverted the claim as being untimely filed.

The Board notes that appellant had filed a prior claim under OWCP File No. xxxxxx848 for a December 2, 1997 traumatic injury claim (Form CA-1) which was accepted for sprain of the back, lumbar region, degeneration of lumbar or lumbosacral intervertebral disc, prolonged depressive reaction, and other acquired deformities of the ankle and foot. The record reflects that appellant was paid wage-loss compensation from February 1998 until she returned to work on November 13, 1998. She stopped work that day and was returned to the periodic rolls. Appellant was receiving compensation for total disability under that file number when she filed the March 30, 2016 claim, assigned File No. xxxxxx763.

On October 5, 2009 appellant had also filed a claim for an alleged traumatic injury on November 18, 1998. This claim was denied as untimely on April 20, 2010.³

By letter dated April 25, 2016, OWCP requested that appellant submit further information to support her claim for a November 13, 1998 employment injury. It asked that she submit, *inter alia*, evidence to support that she provided timely notification of her work injury, evidence that she experienced an employment event or incident, and medical evidence in support of her claim. OWCP afforded appellant 30 days to submit the evidence.

In a statement dated July 23, 2016, appellant contended that the fact that she had been injured at work in November 1998 had already been established, as well as the fact that she was working regular duty in November 1998. She alleged that her injury was the result of having to work starting November 13, 1998 beyond her physical restrictions. Appellant alleged that evidence supports that she was having difficulty after returning to work on November 13, 1998 and that on November 18, 1998 the doctor recommended that she work light duty for two weeks. She alleged that her supervisor and the nurse for the employing establishment were fully aware of the danger they put her in by not complying with her work restrictions. Appellant also alleged that she sent notice of actual damage to OWCP on January 22, 1999. She asserted that her supervisor knew of her injury.

³ Appellant continued to request further review of the denial of this claim by OWCP and the Board. In a December 2, 2011 decision, the Board found that OWCP had properly denied appellant's request for reconsideration. Docket No. 11-983 (issued December 2, 2011). While the case was before the Board on this prior appeal OWCP issued an April 18, 2011 decision, which appellant subsequently appealed to the Board. By order dated April 23, 2012, the Board determined that, as OWCP and the Board could not have simultaneous jurisdiction over a case, OWCP's decision of April 18, 2011 was declared null and void. By decision dated February 20, 2013, OWCP denied appellant's request for reconsideration as untimely filed and failing to demonstrate clear evidence of error. By decision dated September 5, 2013, the Board affirmed that decision. Docket No. 13-1242 (issued September 5, 2013).

By decision dated August 9, 2016, OWCP denied appellant's claim as it was untimely filed. It noted that the date of her alleged injury was November 13, 1998, and the claim for compensation was filed on March 30, 2016. OWCP explained that the claim should have been filed within three years of the date of injury. It further determined that appellant's immediate supervisor did not have actual knowledge within 30 days of the date of injury.⁴

LEGAL PRECEDENT

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁵ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁶ Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

- (1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death; or
- (2) written notice of injury or death as specified in section 8199 was given within 30 days.⁷

Section 8119 of FECA provides that a notice of injury or death shall be given within 30 days after the injury or death, be given to the immediate supervisor or the employee by personal delivery or by depositing it in the mail properly stamped and addressed, be in writing, state the name and address of the employee, state the year, month, day, and list the particular locality where the injury or death occurred, state the cause and nature of the injury or in the case of death, the employment factors believed to be the cause, and be signed by and contain the address of the person giving the notice.⁸ Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁹ For actual knowledge, the employee must show not only that the immediate superior knew that he or

⁴ On August 17, 2016 appellant requested a review of the written record by an OWCP hearing representative regarding the denial of her claim. The decision by the hearing representative issued on February 15, 2007 is null and void. The Board and OWCP may not exercise simultaneous jurisdiction over the same issue on appeal. See *Arlonia Taylor*, 44 ECAB 591, 597 (1993). 20 C.F.R. § 501.2(c)(3).

⁵ *C.D.*, 58 ECAB 146 (2006); *David R. Morey*, 55 ECAB 642 (2004); *Mitchell Murray*, 53 ECAB 601 (2002).

⁶ *W.L.*, 59 ECAB 362 (2008); *Gerald A. Preston*, 57 ECAB 270 (2005); *Laura L. Harrison*, 52 ECAB 515 (2001).

⁷ 5 U.S.C. § 8122(a). See *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *J.P.*, 59 ECAB 178 (2007); *Cory W. Davis*, 57 ECAB 674 (2006).

⁸ 5 U.S.C. § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

⁹ *Laura L. Harrison*, *supra* note 6.

she was injured, but also knew or reasonably should have known that it was an on-the-job injury.¹⁰

When a traumatic injury of definite time, place, and circumstances is involved, the time for giving notice of injury and filing for compensation begins to run at the time of the incident, even though the employee may not have been aware of the seriousness or ultimate consequences of this injury.¹¹ The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.¹²

ANALYSIS

Appellant filed her claim for a traumatic injury on March 30, 2016, more than 17 years after the November 13, 1998 alleged employment incident. Therefore, her claim was filed outside the three-year time limitation period which ended on November 13, 2001.¹³

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if her immediate superior or another employing establishment official had actual knowledge of the injury with 30 days of the date of injury.¹⁴ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury.¹⁵ The evidence does not support that appellant advised her superior that she sustained a new injury on November 13, 1998, within 30 days. Knowledge of an employee's illness alone is insufficient to establish actual knowledge for timeliness. Appellant must show that the circumstances were such as to put the superior on notice that the alleged injury or condition was actually related to the employment as the employee alleged.¹⁶

The Board finds that appellant has not established actual knowledge by her supervisors of a work-related injury within 30 days of the date of the incident. Furthermore, the record is void of any indication that his superior had written notice of a claim within 30 days of the date of injury. Accordingly, the exceptions to the statute have not been met, and appellant has failed to file a timely claim.

¹⁰ *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹¹ *Emma L. Brooks*, 37 ECAB 407 (1986).

¹² *Supra* note 10.

¹³ *See G.M.*, Docket No. 16-0220 (issued March 15, 2016).

¹⁴ *Larry E. Young*, *supra* note 8.

¹⁵ *Kathryn A. Bernal*, 38 ECAB 479 (1987).

¹⁶ *See id.*; *Roseanne S. Allexenberg*, 47 ECAB 498 (1996) (where the Board held that knowledge of an employee's illness is not sufficient to establish actual knowledge and timeliness of a claim. It must be shown that the circumstances were such as to put the superior on notice that the alleged injury was actually related to the employment as the employee alleged).

Consequently, appellant has not met her burden of proof to establish that she filed a timely notice of traumatic injury claim for compensation under the applicable time limitation periods of FECA.

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. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant's claim for compensation was not filed within the applicable time limitation provisions of FECA.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 9, 2016 is affirmed.

Issued: July 24, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board