

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROGER CAMPOS and DEPARTMENT OF STATE,
FOREIGN SERVICE, Washington, DC

*Docket No. 98-1552; Submitted on the Record;
Issued February 28, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs correctly determined that appellant's claim for compensation is barred by the applicable time limitation provision of the Federal Employees' Compensation Act.¹

On March 17, 1997 appellant, then a 50-year-old officer, filed a claim alleging that his post-traumatic stress was causally related to his work as a member of the Task force for the Tenerife air disaster.² Appellant indicated that he first became aware of his disease on March 30, 1977 but did not realize that it was due to his federal employment until July 16, 1996 when an initial assessment was performed. In an attached statement, appellant stated that he began having nightmares, emotional numbing, episodes of panic, shortness of breath, heart palpitations and dreams of death both during the recovery operation in Tenerife and after returning to his diplomatic post in Spain. Appellant also stated that he did not inform anyone of his difficulties.

In support of his claim, appellant submitted a July 16, 1996 assessment by Dr. Michael C. Fitzpatrick, an attending Board-certified psychiatrist. Dr. Fitzpatrick diagnosed post-traumatic stress syndrome and noted that appellant had "nightmares, vivid intrusive images, emotional numbing, intense autonomic arousal, episodes of 'panic,' and multiple somatic symptoms including insomnia, shortness of breath, palpitations, diaphoresis, gastrointestinal distress, difficulty concentrating and a sense of depersonalization" during his time on Tenerife and upon his return to Spain.

¹ 5 U.S.C. §§ 8101-8193.

² The record indicates that the air disaster occurred on March 27, 1977. Appellant alleged on his CA-2 form that he sustained post-traumatic stress disorder on March 30, 1977 when he was dispatched to the disaster scene. Appellant was last exposed to this disaster on April 4, 1977. Appellant resigned from the employing establishment as of November 9, 1977.

By letter dated July 11, 1997, the Office advised appellant that both his statement and the report from Dr. Fitzpatrick indicate that his symptoms predated his departure from the employing establishment and that an occupational disease claim must be filed within three years of the date of awareness of the disease being caused by work factors. The Office requested that he submit information to indicate that an emotional claim had been filed by March 30, 1980 or that his supervisor had been notified of the presence of his condition by April 30, 1980.

By letter dated September 4, 1997, the Office advised appellant that the information submitted was insufficient to determine eligibility as it appeared he had failed to timely file his claim for compensation and requested he submit additional information.

In a report of a telephone conversation dated September 4, 1997, the Office contacted appellant's supervisor, Mr. Clint Lauderdale who stated that he did not recall appellant mentioning any of the stress symptoms he alleged, but stated that "it would n[o]t surprise him if claimant had experienced such symptoms" as he opined that "all personnel from the State Department working with this tragedy experienced substantial stress."

In a letter dated September 26, 1997, appellant replied to the Office's September 4, 1997 letter and indicated that he had not received the July 11, 1997 letter. Appellant argued that his claim was timely filed as he was not aware that he had post-traumatic stress due to his federal employment until his assessment on July 16, 1996 by Dr. Fitzpatrick. He also argued that the employing establishment was aware "of the extreme perils and hazards of my duty as a member of the Tenerife Air Disaster Task Force" and that he had been awarded a superior honor award for his work performed during this tragedy.

By decision dated October 22, 1997, the Office denied appellant's claim, finding that it was untimely filed. The Office found that appellant was aware or reasonably should have been aware of a relationship between his employment and the claimed condition by April 4, 1977, the date he was last exposed to the disaster.

By letter dated October 28, 1997, appellant requested a review of the written record by an Office hearing representative. Appellant contended that due to his post-traumatic stress he failed to seek medical treatment or report his emotional problems.

By decision dated March 6, 1998, the hearing representative affirmed the Office's October 22, 1997 decision denying appellant's claim as untimely. The hearing representative stated that, under the Act, appellant had to file his claim within three years of the date he was aware or reasonably should have been aware of a relationship between his employment and the claimed condition. The hearing representative noted that while appellant had indicated that he became aware of the condition on March 30, 1977, appellant's statements also demonstrated that appellant was aware or reasonably should have been aware of the relationship between his condition and his employment on April 4, 1977, the last day he was exposed to the disaster. The hearing representative found that appellant was aware of such a relationship on April 4, 1977. The hearing representative, therefore, found that appellant's March 17, 1997 claim was untimely filed and affirmed the Office's October 22, 1997 denial of appellant's claim.

The Board finds that the Office correctly determined that appellant's claim for compensation is barred by the applicable time limitation provision of the Act.

Section 8122 of the Act states that, an original claim for compensation must be filed within three years after the injury for which compensation is claimed.³ In the case of a latent disability, the time for filing the claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, that his disability is causally related to his employment.⁴ In such a case, the time for giving notice of injury begins to run when the employee knows, or reasonably should have known, that he has a condition causally related to his employment, whether or not there is a compensable disability.⁵

The remaining exceptions to the 3-year limitation are that time does not begin to run against a minor until he reaches the age of 21 or has a legal representative appointed; that time does not run against an incompetent individual while he is incompetent and has no appointed legal representative; and that time does not run against an individual whose failure to comply is excused by the Secretary on the grounds that timely notice could not be given because of exceptional circumstances.⁶

In the present case, appellant filed his claim for compensation on March 17, 1997, alleging that a March 30 through April 4, 1977 injury caused his emotional condition. Appellant indicated that he started having nightmares, emotional numbing, panic attacks, shortness of breath, heart palpitations and dreams of death both during and after the recovery operation in Tenerife. He indicated that he did not discuss these problems with his supervisor or a physician.

As previously stated, written notice of injury and claim for compensation must be filed with an employee's official superior within three years of the alleged injury.⁷ Appellant's claim does not satisfy the 3-year limitation period because his claim was for a March 30 through April 4, 1977 alleged injury for which he did not file a claim until March 17, 1997 -- almost 20 years following the date of the claimed injury.

Appellant's claim would still be regarded as timely under 5 U.S.C. § 8122 if his "immediate superior had actual knowledge of the injury ... within 30 days"⁸ or if "written notice of injury ... was given within 30 days."⁹ In this case, appellant's claim would be regarded as

³ 5 U.S.C. § 8122(a).

⁴ 5 U.S.C. § 8122(b).

⁵ *Id.*

⁶ 5 U.S.C. § 8122(d).

⁷ See 20 C.F.R. §§ 10.100(a), 10.101(a), 10.105(a); 5 U.S.C. § 8122(a); see also *Paul S. Devlin*, 39 ECAB 715, 725-26 (1988) (stating that the time for giving notice of injury and for filing a claim for compensation begins to run at the time of the traumatic incident regardless of whether the claimant is aware of the seriousness of his injury).

⁸ 5 U.S.C. § 8122(a)(1); see *John Giovanni Carrollo*, 41 ECAB 778, 794 (1990); *Jose Salaz*, 41 ECAB 743, 746 (1990).

⁹ 5 U.S.C. § 8122(a)(2).

timely if his immediate superior had actual knowledge of the injury or appellant gave written notice of the injury within 30 days of the claimed injury. The evidence of record does not support that appellant's superior had actual knowledge of appellant's emotional injury or that appellant gave written notice within 30 days.

None of the exceptions which would toll the relevant time limitation provision, furthermore, are applicable in this case. Appellant's failure to file within the time limitation period cannot be excused on the grounds of incompetence or that appellant was a minor at the time of the alleged employment injury. There is no evidence of record supporting either of these exceptions. Nor are there any "exceptional circumstances" within the meaning of section 8122(d)(3)¹⁰ which would permit the Office to excuse appellant's failure to comply with the applicable time limitation provision.

Appellant further contends on appeal that he was not aware of a causal connection between the alleged injury and his emotional condition until his condition was diagnosed on July 16, 1996. Appellant contends that he became aware that he suffered from post-traumatic stress on July 16, 1996 and that, therefore, his March 17, 1997 claim was timely. He contends that the limitation period did not begin to run until July 16, 1996 when he first became aware that his post-traumatic stress was due to his work with the task for the Tenerife air disaster. The Board, however, finds this contention to be without merit.

When an employee becomes aware, or reasonably should have been aware that he or she has a condition which has been adversely affected by factors of his or her employment, such awareness is competent to start the limitations period even though he or she does not know the precise nature of the impairment or whether the ultimate result of such adverse affect would be temporary or permanent.¹¹ It is not necessary for a claimant "to know the exact diagnosis or medical name for his condition if he knows enough about its nature to realize that it is ... work connected."¹² A claimant "need not necessarily have positive medical information linking his condition to the employment if he has sufficient information from any source to put him on notice."¹³ The Board has not required that appellant have definitive evidence of a condition and causal relationship on the date a claim is filed.¹⁴

In this case, appellant alleges that the March 30 through April 4, 1977 alleged injury caused his post-traumatic stress condition and that his condition prevented him from seeking medical care or filing a claim. When he filed his claim, appellant indicated that he realized his

¹⁰ 5 U.S.C. § 8122(d)(3).

¹¹ *Edward Lewis Maslowski*, 42 ECAB 839, 846 (1991).

¹² Larson, *The Law of Workers' Compensation* § 78.41(d); see *William A. West*, 36 ECAB 525, 528-29 (1986) (stating that the statute of limitations begins to run on the date that the employee actually knows of the possible connection between the employee's condition and his employment, or reasonably should have known of the possible relationship).

¹³ Larson, *The Law of Workers' Compensation* § 78.41(f).

¹⁴ *Edward Lewis Maslowski*, *supra* note 11.

condition on March 30, 1977 while he sought medical treatment on July 16, 1996. The Board finds that appellant reasonable should have been aware of a possible relationship between his emotional condition and his employment on April 4, 1977, the date his stay in Tenerife on the air disaster task force ended.¹⁵ The evidence is not sufficient to establish that appellant became incompetent to file his claim after the April 14, 1977 injury.

For the foregoing reasons, the Board finds that appellant's claim was not timely filed in accordance with the three-year time limitation provision of 5 U.S.C. § 8122.

The March 6, 1998 and October 22, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
February 28, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

¹⁵ See *Ina B. Martin*, 12 ECAB 503, 505 (1961) (stating that the fact the claimant was not fully aware of her condition until her separation from federal employment and that she was reluctant to complain while still employed for fear of separation is insufficient to justify a waiver of the applicable time limitation provision); see also *John Giovanni Carrollo*, *supra* note 9 (finding that the relevant limitations period began to run on the date appellant initially became aware of the claimed condition).