

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ALICIA KELLY and ENVIRONMENTAL PROTECTION AGENCY,  
RCRA PROGRAMS BRANCH, New York, NY

*Docket No. 01-968; Submitted on the Record;  
Issued November 29, 2001*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's claim was timely filed pursuant to section 8122(a).

On June 22, 1999 appellant, then a 30-year-old secretary, filed an occupational claim for a psychotic disorder and depression, stating that she first became aware her illness was work related in January 1995 and left her job in January 1995. She stated that she stopped working because she was sick but realized it was work related once she was admitted to the hospital and treated for a mental disability. Appellant stated that the reason for the delay in filing her claim was that she had no knowledge that she was sick. Appellant was treated in a psychiatric hospital for two and a half months as of March 28, 1995 and submitted hospital progress notes on her treatment.

By letter dated July 26, 1999, appellant's former supervisor, Nicoletta DiForte, stated that appellant had not worked since February 6, 1995, that appellant indicated in employing establishment paperwork that she terminated her employment for a "personal commitment," and the attendance records at the time showed that appellant took leave 6 out of 20 weeks of her employment. Ms. DiForte stated that appellant worked 40 hours per week, 5 days a week on weekdays. She stated that she only became aware of appellant's medical condition and treatment when appellant contacted her in July 1999 concerning completion of the CA-2 form.

By letter dated August 23, 1999, the Office of Workers' Compensation Programs informed appellant that additional information was required to prove her claim. Appellant submitted medical documentation showing that she continued to receive psychiatric care on September 21, 1999 and received psychiatric care for "psychotic disorder NOS" following her hospitalization in 1995.

By decision dated November 3, 1999, the Office denied the claim, stating that appellant did not meet the requirements for establishing her claim was filed in a timely manner.

By letter dated November 22, 1999, appellant requested an oral hearing before an Office hearing representative which was held on April 25, 2000. At the hearing, she stated that prior to her emotional problem in 1995, she never had psychiatric problems and did not understand what was happening to her. Appellant stated that her work was stressful but she did not realize she was having a mental problem until she was admitted into the hospital. At the time she just called in sick. Her sister stated that appellant's employment was stressful for her because appellant had too much work. Appellant's sister stated that appellant did not file her claim in 1995 because appellant was mentally incompetent to file and she did not file for appellant because she was also sick at the time.

By decision dated July 25, 2000, finalized on July 31, 2000, the Office hearing representative affirmed the Office's November 3, 1999 decision.

The Board finds that appellant did not establish that her claim was timely filed pursuant to section 8122(a).

Section 8122(a) of the Act<sup>1</sup> states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>2</sup> Section 8122(b) provides that in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.<sup>3</sup> The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.<sup>4</sup>

The evidence establishes that appellant last worked for the employing establishment on February 6, 1995 and was aware she had a work-related emotional condition approximately on March 28, 1995, when she was admitted into a psychiatric hospital for treatment. Appellant did not file her claim for an emotional condition until June 22, 1999, more than three years after March 28, 1995. Since the evidence establishes that appellant's claim was filed more than three years after the date she became aware her emotional condition was work related, the claim was untimely filed. Her sister testified that appellant did not file a timely claim because she was mentally incompetent to file. Appellant did not, however, submit any medical evidence establishing that she was incompetent to file a claim as of May 28, 1995.<sup>5</sup>

Appellant's claim, however, would still be regarded as timely under section 8122(a)(1) of the Act if her immediate superior had actual knowledge of the injury within 30 days of the date on which she related it to her employment.<sup>6</sup> Her supervisor, Ms. DiFotte, however, stated that

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(b).

<sup>4</sup> See *Larry E. Young*, 52 ECAB \_\_\_\_ (Docket No. 00-476, issued February 23, 2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

<sup>5</sup> See *Hugh Massengill*, 43 ECAB 475, 481 (1992).

<sup>6</sup> *Larry Young*, *supra* note 4.

appellant called in sick in 1995 when she took leave and terminated her employment for “personal commitment.” Ms. DiFotte stated that appellant did not inform her of any work-related emotional or physical condition and she only became aware of appellant’s emotional condition in July 1999. Therefore, appellant’s supervisor did not have actual knowledge of the injury within 30 days of the date appellant related it to her employment. Appellant has therefore failed to establish that her claim was timely filed.

The July 31, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
November 29, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Michael E. Groom  
Alternate Member