

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID V. CIVIAN and U.S. GOVERNMENT

*Docket No. 01-715; Submitted on the Record;  
Issued September 9, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's February 28, 2000 request for a schedule award under section 5(f) of the War Claims Act of 1948, is barred by the time limitation provisions of the Federal Employees' Compensation Act.

Appellant, then a 16-year-old high school student, was interned at the Santo Tomas Camp in Manila, Philippines during World War II. He was interned from January 3, 1942 to February 3, 1945. Due to malnutrition, starvation, lack of oral hygiene and physical brutality, appellant suffered dental and eye conditions. On April 17, 1998 he filed a Form WC-3, claim for compensation by a civilian American citizen under section 5(f) of the War Claims Act of 1948,<sup>1</sup> for his periodontal problems and incurred medical expenses resulting from being held at the Santo Tomas Camp by the Imperial Japanese Government during its occupation of the Philippine Islands from January 3, 1942 through February 3, 1945.

By letter dated August 7, 1998, the Office accepted the condition of periodontal disease for payment of medical expenses.

On February 28, 2000 appellant filed a Form WC-3, for a left eye condition, which he alleged resulted from beatings incurred by Japanese guards during his internment. He noted that the amount of incurred medical expenses was unknown, but stated that he was legally blind in his left eye as a result of his internment. Appellant advised that malnutrition and lack of treatment contributed to adverse development of his injuries. He related that a subsequent eye surgery in San Francisco, California, in 1945 for a massive retinal detachment to his left eye was unsuccessful. Appellant further stated that since 1945 he has been legally blind in his left eye.

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<sup>1</sup> 50 U.S.C. App. § 2001 *et. seq.*

By letter dated May 30, 2000, the Office advised appellant that the additional condition of retinal detachment left eye was accepted for payment of medical expenses. The letter noted that a formal decision would be issued regarding entitlement to additional benefits.

By decision dated November 15, 2000, the Office denied appellant's claim for permanent impairment to his left eye on the grounds that it was not timely filed.<sup>2</sup> The Office advised that medical treatment for his accepted conditions was still authorized.

The Board finds that this case is not in posture for decision.

The entitlement to compensation benefits under the Federal Employees' Compensation Act<sup>3</sup> for civilian American citizens held by or in hiding from the Imperial Japanese Government is derived from the War Hazards Claims Act (42 U.S.C. §§ 1701-1717) and the War Claims Act of 1948, (50 U.S.C. §§ 2001-2017). Under 42 U.S.C. § 1701, certain individuals who had injuries resulting from a war-risk hazard were entitled to compensation under the War Claims Act "to the same extent as if the person so employed were a civil employee of the United States and were injured in the performance of duty." The War Claims Act of 1948 provided that the provisions of 42 U.S.C. §§ 1701-1717 "are extended and shall apply with respect to the injury, disability or death resulting from injury of a civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government, to the same extent as if such civilian American citizen were an employee within the purview of 42 U.S.C. §§ 1701-1717."<sup>4</sup>

The War Claims Act addresses time limitations by providing that "notice of injury or death shall not be required; and limitation provisions with respect to the filing of claims for injury, disability or death shall not begin to run until the date of enactment of this section [July 3, 1948]." The War Claims Act further clarified that "rights or benefits which, under this subsection, are to be determined with reference to other provisions of law shall be determined with reference to such provisions of law as in force on January 3, 1948."<sup>5</sup> Therefore, claims filed under section 5(f) of War Claims Act were subject to the same time limits, which applied to claims filed under the provisions of the Federal Employees' Compensation Act, in effect on January 3, 1948. The time limitations of the Federal Employees' Compensation Act required that a claim be filed within one year of injury or within five years with cause.

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<sup>2</sup> The Office advised that the amendments to the War Claims Act concerning time requirements for filing state that claims for disability compensation must be filed within one year of the enactment of the amendments. As the last amendment to the War Claims Act of 1948 concerning time requirements for filing was on August 21, 1954, the filing period was extended to August 21, 1955. The Board notes, however, that this amendment to the War Claims Act pertained to civilian internees in Korea. 50 U.S.C. § 2004(g).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 50 U.S.C. § 2004(f).

<sup>5</sup> *Supra*, at § 2004(f)(4).

Initially, the Board notes that in this case, the Office properly authorized payment for medical treatment for appellant's periodontal condition and retinal detachment of the left eye, notwithstanding the date of filing of appellant's claim for disability and schedule award. Medical expenses are authorized by the Federal Employees' Compensation Act upon proper notice of injury. The notice of injury provision of the Federal Employees' Compensation Act, which authorizes payment of medical expenses is separate and distinct from the claims provision of the Act. The Office has authorized payment of medical expenses not because appellant established that he timely filed a claim for disability or schedule award, but rather because medical expenses were payable to formerly interned citizens under the War Claims Act merely upon a showing of internment and injury, regardless of the timeliness of the filing of the claim.

Pursuant to the provisions of Federal Employees' Compensation Act in effect at the time of appellant's injury, payment for medical treatment could be authorized even if the claim for compensation was not timely filed, if notice of injury was given within one year of the injury or if the immediate supervisor had actual knowledge of the injury within 48 hours of the injury. For those interned citizens claiming under the War Claims Act, however, it was recognized that "notice of injury" could not be provided to the employer as contemplated by the Federal Employees' Compensation Act. Those interned individuals seeking benefits pursuant to the War Claims Act did not have an employer as contemplated by the Federal Employees' Compensation Act.

Therefore, for authorization of payment of medical expenses under the War Claims Act, it was presumed that notice of injury, as contemplated by the Federal Employees' Compensation Act, could not be given.<sup>6</sup> The Federal (FECA) Procedure Manual provided alternative criteria to establish notice for payment of medical expenses under the War Claims Act. The required criteria are that a claimant's name appeared on a census list of a civilian internee camp and that the claimant was a civilian American citizen while interned.<sup>7</sup> The evidence in this case did establish that appellant was an American citizen, interned in a civilian camp; he, therefore, satisfied the requirements for notice of injury such that payment of medical treatment was appropriate. The payment of medical expenses does not, however, establish that a timely claim was filed.

The Board finds that the case is not in posture for a decision regarding the timeliness of appellant's claim for schedule award benefits.

In his February 28, 2000 claim for benefits arising from his left eye condition, appellant requested medical benefits and payment of a schedule award. He noted that he was beaten by guards on January 4, 1942 around the face and left eye, when he was 16 years old. Appellant asserted that he underwent eye surgery in 1945 for a massive retinal detachment to his left eye. This surgery was unsuccessful and rendered him legally blind. He noted that the surgery was done at Stanford Lane Hospital, San Francisco, California, with a Dr. D. Pischel, attending. In

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<sup>6</sup> 50 U.S.C. § 2002(f)(2)(C).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 4 -- Special case Procedures, *War Claims*, Chapter 4.400.6(c) (September 1994).

response to appellant's claim, the Office's supervisory claims examiner wrote to the Foreign Claims Settlement Commission on September 29, 2000, inquiring whether detention benefits had been paid on appellant's behalf. On October 10, 2000, David E. Bradley, Chief Counsel for the Foreign Claims Settlement Commission, responded by letter that appellant had been granted an award on October 23, 1951 of \$1,621.33 as compensation for maltreatment while held as a civilian internee by Japanese forces in the Philippines during World War II.

The response from Mr. Bradley indicates that the Foreign Claims Settlement Commission does have records pertaining to appellant's internment. The evidence of record indicates that appellant underwent surgical treatment for his left eye condition in 1945 and subsequently received some payment in 1951 for his maltreatment while held as an internee. The Office's September 2000 letter to the Commission did not ask, however, whether appellant had previously filed a claim for benefits, which could be construed as a timely claim under the Federal Employees' Compensation Act. The Board has previously held that "while it is the burden of the employee to establish his or her claim, the [Office] also has a responsibility in the development of factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other Governmental source."<sup>8</sup> On remand, the Office should attempt to obtain appellant's complete records from the Foreign Settlement Claims Commission and shall thereafter determine whether appellant has filed a timely claim for Federal Employees' Compensation Act benefits.

The decision of the Office of Workers' Compensation Programs dated November 15, 2000 is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, DC  
September 9, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Ruth A. Hussey (nee Ellerman)*, 9 ECAB 292 (1957).