United States Department of Labor
Employees' Compensation Appeals Board

RUBY M. GREENE, Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, CENTRAL ALABAMA VETERANS HOSPITAL, Montgomery, AL, Employer	)	**Docket No. 05-881** **Issued: August 17, 2005**

Appearances:
Ruby M. Greene, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 7, 2005 appellant filed a timely appeal of the December 7, 2004 and January 5, 2005 decisions of the Office of Workers' Compensation Programs which denied her occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. Appellant also appealed a January 21, 2005 decision which denied her request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly denied appellant's occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On August 11, 2004 appellant, then a 48-year-old former medical clerk, filed an occupational disease claim alleging that she developed post-traumatic stress disorder in the performance of duty. She first became aware of her condition on January 8, 1990 and realized the condition was aggravated by factors of her federal employment on January 10, 2000. Appellant retired on January 16, 1999 and this was her last exposure to the factors of employment.

Appellant submitted a statement, received October 14, 2004, indicating that in 1986 she was working in the surgical ward where she had a stroke and was thereafter transferred to the outpatient department. While working in the outpatient department, her duties included standing for hours processing patients and she noted that this caused her stress. Appellant indicated that a leg condition was misdiagnosed by the employing establishment, that she had to undergo surgery and requested to be transferred again due to stress. She was diagnosed with carpal tunnel syndrome and received compensation for this condition. Appellant submitted a statement from Dr. Tom Lawry, a psychologist, dated September 30, 1998, who noted that she began to breakdown mentally in 1995 when she was misdiagnosed with a herniated disc when she had a tumor in her leg. He opined that the misdiagnosis caused anxiety, depression, suicidal and homicidal feelings. Dr. Lawry noted that appellant was on leave for six months without pay and never returned to work. He diagnosed a major depressive disorder, recurrent severe without psychotic features, and advised that appellant did not have post-traumatic stress disorder but exhibited many of the symptoms. Dr. Lawry opined that appellant's lack of support, her misdiagnosis and a fall she sustained from her chair, led to her emotional and physical problems.

The employing establishment submitted a statement from Lasandra Smith, a workers' compensation specialist, dated October 8, 2004. She advised that the supervisor who would have knowledge of appellant's claim had retired and the current employees could not provide any information. Ms. Smith indicated that appellant was reassigned several times in an attempt to accommodate her; however, the reassignments were unsuccessful.

By letter dated October 20, 2004, the Office requested additional information from appellant noting that the evidence submitted was insufficient to establish her claim.

By decision dated December 7, 2004, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that appellant sustained an emotional condition in the performance of duty.

In an undated letter appellant, requested reconsideration and submitted additional evidence. Appellant stated that she requested reassignment several times from the outpatient and emergency room departments due to the high levels of stress and sexual harassment from male patients. She indicated that her supervisor was a heavy drinker and that she was subject to sexual jokes and advances. Appellant indicated that these incidences caused her major depression and post-traumatic stress disorder. Also submitted was appellant's resignation dated August 2, 1995 noting that she was resigning due to humiliation, embarrassment, unfair treatment and her medical condition. In a letter dated August 10, 1995, appellant withdrew her resignation.

Appellant submitted a certificate of medical examination dated March 18, 1996 which advised that she was unfit for duty due to multiple medical problems including a tumor of the left leg and wrist pain. A memorandum from Arthur Edwards, the chief of human resources management services, dated December 9, 1994, advised that, based on the results of fitness-for-duty examination performed in conjunction with appellant's application for disability retirement, she was unfit for duty due to multiple medical problems and would be removed from her position pending a decision regarding her application for disability retirement. He further noted that, if appellant believed she was experiencing physical or mental problems which were job related, she should submit a claim to the Office of Workers' Compensation Programs or consult an Employee Assistance Counselor. Finally, appellant submitted a report from Dr. Lawry dated December 14, 2004, who opined that she developed major depression and post-traumatic stress disorder as a result of a prior history of sexual abuse as a child, sexually intimidating remarks from patients, and incidents with her supervisor.

By decision dated January 5, 2005, the Office modified the December 7, 2004 decision and denied appellant's claim on the grounds that the evidence of record failed to demonstrate that it was timely filed in accordance with 5 U.S.C. § 8122. The Office found that appellant was first aware of her condition on January 8, 1990 and aware of the relationship between her employment and the claimed condition on January 10, 2000. The Office advised that appellant retired on January 16, 1999 and did not file her claim until August 11, 2004, which was over three years after she was last exposed to work factors. The Office further noted that there was no evidence that appellant's supervisor had knowledge of an employment-related injury within 30 days.

By letter dated January 11, 2005, appellant filed a request for reconsideration. Appellant advised that she was reassigned to the library after reporting certain incidents to a supervisor. She indicated that she filed an "appeal" in December 2003 and the Office claimed the appeal documentation was lost and advised her to file another claim. Appellant advised that she retired from the employing establishment but still experienced the mental after effects of her trauma.

By decision dated January 21, 2005, the Office denied appellant's reconsideration request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of the Act[1] states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."[2] 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

[1] 5 U.S.C. § 8122(a).

[2] *Id.*

the causal relationship between the employment and the compensable disability.[3] 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.[4]

The claim would still be regarded as timely under section 8122(a)(1) of the Act if the immediate supervisor had actual knowledge of the alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.[5] An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[6]

ANALYSIS -- ISSUE 1

The Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that it was timely filed in accordance with 5 U.S.C. § 8122.

Appellant noted on her occupational disease claim form that she first became aware of a connection between her claimed emotional condition and her employment on January 10, 2000. Thus appellant had actual awareness of the causal relationship between her employment and her claimed disability no later than January 10, 2000. The record reveals that appellant was last exposed to work factors on January 16, 1999, the day she retired. Therefore, the time limitations began to run on January 10, 2000, the date on which appellant stated that she became aware of the relationship between her claimed injury and her employment. Since appellant did not file her claim until August 11, 2004, it was filed outside the three-year time limitation period under section 8122(b).

Appellant's claim, however, would still be regarded as timely under section 8122(a)(1) of the Act if her immediate supervisor had actual knowledge of the injury 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.[7] Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.[8]

The record contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. The employing

[3] 5 U.S.C. § 8122(b).

[4] *See Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993); *Alicia Kelly*, 53 ECAB 244 (2001); *Mitchell Murray*, 53 ECAB 601 (2002).

[5] 5 U.S.C. § 8122(a)(1); *see also Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(a)(3) (March 1993).

[6] *Charlene B. Fenton*, 36 ECAB 151 (1984).

[7] 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

[8] 5 U.S.C. §§ 8122(a)(1) and (2).

establishment submitted a statement from Lasandra Smith, a workers' compensation specialist. She advised that the supervisor who would have knowledge of appellant's claim had retired and the current employees could not provide any information. The only other evidence which references a potential mental condition was a memorandum from Arthur Edwards, the chief of human resources management services, dated December 9, 1994, which advised appellant that, if she believed she was experiencing physical or mental problems which were job related, she should submit a claim to the Office or consult an Employee Assistance Counselor. However, there is no evidence that Mr. Edwards was appellant's immediate supervisor and the evidence is insufficient to show that he had actual knowledge to put him reasonably on notice of an on-the-job injury. Therefore, the Board finds that the record is devoid of any evidence that appellant's immediate supervisor had actual knowledge of her injury within 30 days. The exceptions to the statute have not been met and thus, appellant has failed to establish that she filed a timely claim on August 11, 2004.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[9] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[10] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) advances a relevant legal argument not previously considered by the [Office]; or
>
> "(iii) constitutes relevant and pertinent new evidence not previously considered by [the Office]."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[11]

ANALYSIS -- ISSUE 2

Appellant's January 11, 2005 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office.

[9] 5 U.S.C. § 8128(a).

[10] 20 C.F.R. § 10.606(b).

[11] 20 C.F.R. § 10.608(b).

Appellant did not submit any additional evidence with her reconsideration request, only a narrative statement which advised that she was reassigned to the library after reporting certain incidents to a supervisor. She indicated that she filed an "appeal" in December 2003 and the Office claimed it was lost and advised her to file another claim.[12] Appellant indicated that she retired from the employing establishment but still experienced the mental after effects of her trauma. However, appellant's statement are repetitive of those previously submitted and considered by the Office in its decisions dated December 7, 2004 and January 5, 2005 and found deficient.[13] Therefore, the Office properly determined that this evidence did not constitute a basis for reopening the case for a merit review. Appellant did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with her reconsideration request.

The Board finds that the Office properly determined that appellant was not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), and properly denied her January 11, 2005 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act and that the Office properly denied appellant's request for reconsideration.

[12] On reconsideration, appellant alluded to another claim. To the extent that she may have filed other claims with the Office, this decision only pertains to the August 11, 2004 notice of occupational disease.

[13] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case; *see Daniel Deparini*, 44 ECAB 657 (1993); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 21 and January 5, 2005 are affirmed.

Issued: August 17, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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