

attending a political meeting. He sustained injuries to his ribs, shoulder and neck. Appellant stopped work on October 4, 1972 and returned on November 1, 1972.¹

In a January 27, 2004 letter, appellant requested compensation for his injury. He reiterated that he was involved in a “ghastly motor traffic accident in 1972 after attending political meetings in Ibadan Western House of Assembly and reported the meetings to the Embassy.” Appellant alleged that he was covered by a travel order prepared and signed by the Embassy Administrative counselor. He enclosed a copy of the medical report from the accident. Appellant alleged that he had been suffering in silence for many years and did not file a claim with the Embassy. He was now filing a claim due to his deteriorating health. Appellant alleged that he had served the American Embassy in Lagos, Nigeria, for 20 years and saved the lives of several foreign service officers.

The October 4, 1972 report was signed by Dr. I.A. Grillo, a Board-certified thoracic surgeon, who diagnosed multiple rib fractures of the left breast, traumatic left hemothorax and fracture of the left clavicle. Dr. Grillo noted that appellant was in a “motor traffic accident” was under observation for three weeks. A copy of an attending physician’s report was also received, however, it was unsigned.

In a March 6, 2004 statement, appellant alleged that he was unable to obtain the signature of the attending physician because the accident occurred in Nigeria in 1972. He submitted a copy of a July 17, 1978 report from a physician, whose signature is illegible, which contained a diagnosis of “Class C-myopia, corrected by lenses.” The report contained findings, including that appellant had “old united fractures of the left [fourth to eighth] ribs” and “pleural thickening at the left costo-phrenic angle.”

Appellant submitted a copy of an August 3, 1977 letter from Lester Slezak, the labor and social affairs adviser, who expressed his appreciation for appellant’s work. He also submitted a photograph of himself with the ambassador and his wife and a copy of a temporary-duty official travel authorization for the period October 1, 1983 to September 30, 1984, a copy of November 28, 1984 letter of the Vice President George Bush, thanked appellant for kind words. In a letter dated September 22, 1978, May A. Belair, a personnel officer with the employing establishment confirmed that appellant was employed with the American Embassy in Lagos from October 15, 1962 to September 22, 1978.

In a letter dated March 24, 2004, the Office requested additional evidence from the employing establishment regarding the claim. It requested that the employing establishment verify whether appellant’s assigned duties included the activities of October 4, 1972 and whether he was authorized to travel to and from meetings as part of his assigned duties. In a separate letter of March 24, 2004, the Office requested additional evidence from appellant, including a detailed explanation for not reporting the October 4, 1972 injury prior to March 5, 2004, copies of any documents pertaining to the political meeting and his reasons for being there, including the location of the meeting and a copy of the authorization from the Embassy, copies of travel

¹ The date is filled in as October 1; however, this appears to be a typographical error. The report is also unsigned by the employing establishment.

authorizations or similar documents pertaining to 1972, copies of police reports or other similar reports related to his October 4, 1972 automobile accident and copies of any other documents which might be relevant to the accident of October 4, 1972.

The Office subsequently received a position description for a political/labor officer and a copy of a previously submitted temporary-duty travel authorization dated "October 14, 1983."

In an April 2, 2004 letter, appellant stated that the American Embassy notified the Department of State via a series of telegrams about his accident. He noted that he was not aware of the procedures for filing a compensation claim. Appellant reported where the political meeting took place and stated that he was issued a travel authorization for the meeting. Regarding the travel authorization, he alleged that it was burned at the scene of the accident along with maps and publications which were procured for the Embassy. Regarding a police report, appellant alleged that he did not see a police officer although he later learned that policemen visited the American Consulate regarding the accident and that he believed that a report had been prepared.

By decision dated April 28, 2004, the Office denied the claim on the grounds that it was not timely filed within three years under 5 U.S.C. § 8122. The Office found that the evidence did not establish that appellant's immediate supervisor had actual knowledge within 30 days of the injury.

By letter dated May 10, 2004, appellant requested a hearing. He alleged that the American Consulate in Ibadan was fully aware of his accident and his injuries.

In a letter dated March 1, 2004, addressed to appellant, Claudio Anyaso, the Charge'd' Affairs of the United States Mission in Nigeria, advised him that his official personnel folder was destroyed as it was more than 20 years since he left his service with the Embassy in Lagos. Mr. Anyaso further noted that, without copies of the documentation of the accident or copies of his travel orders, they could not establish a legitimate claim. In a May 10, 2004 letter, Melissa J. Garza, a human resources officer, confirmed that the employing establishment did not have any records to support appellant's claim and could not verify the authenticity of the documents he submitted to the Office.

By decision dated November 24, 2004, the Office hearing representative vacated the April 29, 2004 decision as it incorrectly cited the statutory filing requirements for injuries occurring on or after September 7, 1974. The Office hearing representative remanded the case for further development to determine whether appellant's supervisor had actual knowledge of the injury within 48 hours.

In a December 12, 2004 statement, appellant informed the Office that his immediate supervisor at the time was Andrew Steigman, a political counselor. He also noted that Thomas Walsh was the labor attaché. Appellant alleged that both individuals visited him at the hospital the next day, following his accident. He reiterated that his travel documents were burned at the scene of the accident along with a copy of his travel order.

In a February 25, 2005 telephone memorandum, an Office claims examiner indicated that she contacted Mr. Steigman to ask if he had any recollection of the accident. Mr. Steigman indicated that he arrived in the summer of 1972 but did not recall appellant or the incident. The claims examiner also spoke with Samuel Thomsen who advised that he did not arrive at the Embassy until the fall of 1976. He had no recollection of the accident. The claims examiner also contacted Oliver Crosby and Harry Cahill; however, neither of these individuals could recall any details or knowledge regarding the incident. In a separate telephone memorandum of the same date, the claims examiner contacted other individuals who had been employed at the Embassy, however, none of the individuals recalled appellant or the 1972 accident.

By decision dated February 25, 2005, the Office rejected appellant's claim on the grounds that it was not timely filed within five years of the claimed injury. The Office noted that, as the injury occurred prior to 1974, the standard adjudication was under the Federal Employees' Compensation Act prior to the 1974 amendments.

On March 11, 2005 appellant requested a hearing, which was held on March 28, 2006.

The Office subsequently received copies of documents which were previously submitted. They included a July 17, 1978 report, an August 3, 1997 letter from Mr. Slezak, a January 27, 2004 statement from appellant, the March 1, 2004 letter from Ms. Anyaso and a copy of the October 4, 1972 report with findings from Dr. Grillo. Appellant also submitted a photograph of several political dignitaries thanking him for his work and a letter of recommendation. The Office also received an undated statement from an individual, whose complete name was not provided, advising it that appellant's personnel file was destroyed. The March 2, 1984 letter from Leonard Williams, First Secretary, advised the Office that appellant was employed by the U.S. Embassy in Lagos, Nigeria from 1962 until September 1978, when he resigned to emigrate to the United States. He noted that in 1982 appellant returned and was reemployed from April 1982 until March 1984, when he resigned to rejoin his children in the United States. Mr. Williams described appellant's duties from 1982 to 1984; however, he did not address the 1972 motor vehicle accident. In a March 2, 1984 statement, Bert C. Moore, a counselor of embassy for administration, noted that appellant worked for the American Embassy in Lagos from October 15, 1962 through September 22, 1978 and also from April 15, 1982 through March 2, 1984.

By decision dated June 15, 2006, the Office hearing representative affirmed the February 25, 2005 decision. She found that the claim was not filed within the five-year time limit and that the immediate supervisor did not have actual knowledge of the injury within 48 hours of the claimed injury.

LEGAL PRECEDENT

For injuries occurring prior to September 7, 1974, the time limitation provisions of the Act require that an injured employee file a claim for compensation within one year after the injury.² The one-year requirement may be waived provided the claim is filed within five years

² 5 U.S.C. § 8122 (1966). Section 8122 was amended as of September 7, 1974 to provide the current three-year time limitation.

and it is found that: (1) the failure to timely file was due to circumstances beyond the control of the employee; or (2) the employee has shown sufficient cause or reason in explanation of the late filing and material prejudice to the interest of the United States has not resulted.³ The filing provision is a maximum, mandatory requirement which may not be waived regardless of the reasons for or the circumstances surrounding the failure to file a claim within the prescribed time limit.⁴

Where a traumatic injury definite in time, place and circumstances is involved, the time for giving notice of injury and filing claim 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 his injury.⁵ The time limitations do not run against an incompetent individual while he is incompetent and has no duly appointed legal representative.⁶

ANALYSIS

Appellant alleged that he was involved in a work-related automobile accident while in the performance of his duties on October 4, 1972. He was aware of an employment injury as of that date, but did not file a claim for compensation until March 5, 2004. Based on appellant's statement, the time limitation provision began to run on October 4, 1972 the date he was injured in the automobile accident. There is no evidence that appellant was incompetent or any other probative evidence of record that would start the time limitation period beyond October 4, 1972. Accordingly appellant had one year from October 4, 1972 to timely file a claim. Even if he were allowed the opportunity to present argument as to whether the one-year requirement should be waived under the pre-1974 section 8122, he must file the claim within five years. The five-year time limitation period is a mandatory maximum period and may not be waived by the Board or the Office for any reason.⁷

Appellant filed his claim on March 5, 2004. The mandatory five-year time limitation period expired on October 4, 1977. Although he advised that he was unaware of the time limit for filing a claim, the Board has held that an employee's ignorance of the law and of the possible entitlement to compensation does not create an exception to the filing requirement.⁸ The Board accordingly finds that appellant's claim was not timely filed in this case based on the evidence of record.

The Board notes that, for injuries prior to September 7, 1974, a claimant could be entitled to medical benefits despite the failure to timely file a claim if written notice of injury was filed in

³ *Id.*; see also *Allen E. Grether*, 24 ECAB 76 (1972).

⁴ *Marcelo Crisostomo*, 42 ECAB 229 (1991).

⁵ *Adrian M. Kallander*, 8 ECAB 654 (1956).

⁶ See *Allen E. Grether*, *supra* note 3.

⁷ *James Stevenson Garner*, 26 ECAB 156 (1974).

⁸ *Veola Dixon*, 22 ECAB 322 (1971).

accord with 5 U.S.C. § 8119 or if the immediate supervisor had actual knowledge of the injury within 48 hours after the occurrence of the injury.⁹

Appellant alleged that he did not initially file a claim and suffered in silence for many years. He did not explain that there were any particular reasons that prevented him from reporting the accident such that would justify waiver.¹⁰ While appellant alleged that the documents were destroyed in the automobile accident, he was not able to provide documentation from an immediate supervisor, who was aware of the automobile accident to support timely actual knowledge. The Office received a statement from Mr. Belair, a personnel officer, who confirmed that appellant was employed with the American Embassy in Lagos from October 15, 1962 to September 22, 1978. A letter from Mr. Anyaso, the Charge'd' Affairs, indicated that appellant's personnel file was destroyed. Mr. Anyaso also advised that the employing establishment did not have any documentation regarding the accident. In addition, the Board notes that Ms. Garza, a human resources officer, confirmed that they did not have any records to support appellant's claim and could not verify the authenticity of documents submitted to the Office.

The Office claims examiner contacted various individuals identified by appellant as being his supervisors or of having knowledge of the 1972 incident. Mr. Steigman indicated that he arrived in the summer of 1972, however, he did not recall appellant or the incident. Mr. Thomsen advised that he did not arrive at the Embassy until the fall of 1976 and had no recollection of the accident. None of the individuals identified by appellant could recall any details or had knowledge regarding the 1972 motor vehicle accident. The Board finds that he has not presented any evidence from individuals qualifying as his immediate supervisors, who acknowledged awareness of an automobile accident on October 4, 1972. Thus, appellant is not entitled to medical benefits.

For these reasons, appellant's claim is not timely and is barred by the applicable time limitation provisions of the Act.

CONCLUSION

Appellant's claim is barred by the applicable time limitation provisions of the Act.

⁹ See, e.g., *Ida Ambler*, 25 ECAB 116 (1974).

¹⁰ See *Adrian M. Kallander*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the June 15, 2006 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: January 9, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board