

**United States Department of Labor
Employees' Compensation Appeals Board**

S.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Des Moines, IA, Employer**

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**Docket No. 14-506
Issued: June 18, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 7, 2014 appellant filed a timely appeal from the November 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant filed timely claims for work injuries on January 10, 2008.

¹ The November 21, 2013 decision of OWCP denied appellant's claim for a work injury on January 10, 2008. OWCP had previously denied his claim for a work injury on April 16, 2008, but this matter was not the subject of the November 21, 2013 decision or the present appeal.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 25, 2011 appellant, then a 62-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that he injured his right knee and right hip due to two falls at 10:00 a.m. and 11:00 a.m. on January 10, 2008. He stated, “slipped on ice and fell on right knee [illegible]. Cleats caught on ice and fell on right hip and knee.” Appellant did not stop work on January 10, 2008.

In a February 3, 2012 decision, OWCP denied appellant’s claim for a January 10, 2008 work injury finding that it was not timely filed under FECA. In a February 9, 2012 decision, it also denied his claim for a January 10, 2008 work injury because it was not timely filed. In each decision, OWCP found that appellant did not file a timely traumatic injury claim and that his immediate supervisor did not receive verbal or written notice of the claimed injury within 30 days. In two June 12, 2012 decisions, an OWCP hearing representative affirmed the February 3 and 9, 2012 decisions finding that appellant did not file timely claims for work injuries on January 10, 2008.

In a February 5, 2013 decision,³ the Board affirmed the June 12, 2012 decision of OWCP pertaining to appellant’s claimed April 16, 2008 injury, but set aside the June 12, 2012 decision of OWCP pertaining to his claimed January 10, 2008 injury and remanded the case to OWCP for further development. The Board found that the evidence of record suggested that appellant reported his claimed January 10, 2008 injury to his supervisor within 30 days, such that his claim would be considered timely filed within the meaning of FECA. The Board noted that the record contained several statements about the claimed January 10, 2008 injury which required clarification. On appellant’s Form CA-1 for the two falls alleged to have occurred on January 10, 2008, Jeffrey St. Peter, a Postmaster at the employing establishment, stated, “Carrier made comments during both incidents that he was not wearing ice cleats.” In an October 13, 2011 statement, Mr. St. Peter noted that the “supervisor” did not have any direct knowledge of any specific injury incurred by appellant on January 10, 2008. He stated that appellant “did fall down twice that day both times failing to follow safety procedures, but he claimed that he was not injured and just a little sore” and that appellant “also notified the [p]ostmaster that he had fallen off of his ladder cleaning snow from his roof two days prior.” The Board noted that the statements suggested that appellant reported the January 10, 2008 falls (along with some adverse effects) around the time they occurred, although the record was vague with respect to precisely when and to whom they were reported. The Board found that clarification was required to determine whether appellant reported his claimed January 10, 2008 injury in such a manner that his claim would be timely within the meaning of FECA. The Board remanded the case to OWCP for further evidentiary development and an appropriate merit decision regarding appellant’s claim for a January 10, 2008 work injury.

In a March 5, 2013 letter, OWCP requested that the employing establishment clarify the matter of when a supervisor gained knowledge that appellant had injured himself due to sustaining two falls at work on January 10, 2008.

³ Docket No. 12-1779 (issued February 5, 2013).

In a March 11, 2013 e-mail response, Mr. St. Peter stated:

“I, Jeff St. Peter, was aware of the falls sustained by [appellant] on the date they occurred. I did an onsite investigation on that date. I was checking on [appellant] in the morning and he [stated that] he had fallen down. I went and checked out the location where he [stated that] he fell. [Appellant] also returned from the route later in the day and [stated that] he fell down again but failed to report it when it happened. He [stated that] he was a little sore but never mentioned any injuries.... [Mr.] St. Peter is [also known as] the supervisor and Postmaster. There is no other management or supervisor in the Sac City office....

On January 16, 2008 [appellant] [stated that] his hips were hurting from falling the previous week.... On April 8, 2008 he [stated that] he got out of bed early and hurt his foot somehow. [Appellant] did not know for sure what was wrong.... Summary: Any injuries related to his foot were never mentioned as an injury on the job. [Appellant] had referred to something with his foot that was at home and not work related.”

In an April 15, 2013 decision, OWCP denied appellant’s claim for a January 10, 2008 injury on the grounds that it was untimely filed. It found that the March 11, 2013 statement of Mr. St. Peter showed that the employing establishment was aware of a work incident, but that the employing establishment “did not have knowledge or notification that the work incident resulted in a physical condition such as to put him reasonably on notice of an on-the-job injury within 30 days from January 10, 2008.” OWCP further stated, “Your case is denied because the evidence does not support a finding that your claim was filed within three years of the date of injury or that your immediate supervisor had actual knowledge within 30 days of the date of injury. The date of your injury is January 10, 2008. The claim for compensation was filed on May 25, 2011.”

Appellant requested a hearing before an OWCP hearing representative.⁴ At the September 4, 2013 hearing, he testified that, on the date they occurred, he reported to Mr. St. Peter the two falls that he sustained at work on January 10, 2008. Appellant noted that he told Mr. St. Peter on January 10, 2008 that he was injured by the two falls.

In a November 21, 2013 decision, an OWCP hearing representative affirmed the April 15, 2013 decision denying appellant’s claim for a January 10, 2008 injury as untimely filed.

LEGAL PRECEDENT

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁵ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation

⁴ Appellant submitted medical reports of Dr. Sinnott, Dr. Toben and other attending physicians.

⁵ *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

“(1) the immediate superior had actual knowledge of the injury or death 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; or

“(2) written notice of injury or death as specified in section 8119 was given within 30 days.”⁶

Actual knowledge and written notice of injury under section 8119 of FECA serve to satisfy the statutory period for filing an original claim for compensation.⁷ OWCP procedure provides further describes actual knowledge by of an immediate supervisor of a claimed injury:

“Knowledge by the immediate superior, another official at the employing establishment or any agency physician or dispensary that an employee has sustained an injury, alleges that an injury has been sustained or alleges that some factor of the employment has resulted in a physical condition constitutes actual knowledge. Such knowledge does not have to be firsthand or acquired as an eyewitness to the accident.”

* * *

“Such knowledge or notification must be such as to put the employing establishment reasonably on notice of an on-the-job injury or death. It is not sufficient that the immediate superior, official or dispensary worker at the employing establishment was aware that the employee complained of back pain, suffered a myocardial infarction, etc. To constitute actual knowledge, it must be found that the immediate superior, other official or dispensary worker was aware that the employee related the back pain, [myocardial infarction], etc. to an injury sustained while in the performance of duty or to some factor of the employment.”⁸
(Emphasis in original.)

When a traumatic injury definite in time, place and circumstances is involved, the time for giving notice of injury and filing 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.⁹ The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.¹⁰

⁶ 5 U.S.C. § 8122(a).

⁷ *Laura L. Harrison*, 52 ECAB 515 (2001).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3a(3) (March 1993).

⁹ *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

¹⁰ *Delmont L. Thompson*, 51 ECAB 155 (1999).

ANALYSIS

Appellant filed a traumatic injury claim alleging that he injured his right knee and right hip due to two falls at 10:00 a.m. and 11:00 a.m. on January 10, 2008. OWCP denied his claim for a January 10, 2008 work injury on the grounds that it was untimely filed. In a February 5, 2013 decision, the Board remanded the case to OWCP to further develop whether an immediate supervisor had actual knowledge of the claimed injury within 30 days such that the claim was timely filed. On remand, OWCP received a response to a request for further clarification from Mr. St. Peter, the Postmaster at appellant's workplace and his sole supervisor.

The Board finds that appellant has established that his claim for a work injury on January 10, 2008, due to two falls on that date, was filed in timely manner. The new evidence from Mr. St. Peter, in the form of his March 11, 2013 statement, establishes that appellant's immediate supervisor had actual knowledge of his claimed injury within 30 days. Therefore, despite not filing a traumatic injury claim to OWCP within three years, appellant's claim was timely filed.¹¹

In his March 11, 2013 statement, Mr. St. Peter acknowledged that he was appellant's immediate supervisor and that he was aware on January 10, 2008 that appellant reported suffering injury due to two falls on that date.¹² He stated that he was aware of the falls sustained by appellant on the date they occurred, January 10, 2008, and that he performed an onsite investigation on that date. Mr. St. Peter noted:

"I was checking on [appellant] in the morning and he [stated that] he had fallen down. I went and checked out the location where he [stated that] he fell. [Appellant] also returned from the route later in the day and [stated that] he fell down again but failed to report it when it happened. He [stated that] he was a little sore but never mentioned any injuries.... On January 16, 2008 [appellant] [stated that] his hips were hurting from falling the previous week...."

Mr. St. Peter's statement establishes that the postmaster was "reasonably on notice of an on-the-job injury."¹³

The Board finds that appellant's reporting on January 10, 2008 he was sore due to his two falls on that date and his reporting on January 16, 2008 that his hips were hurting from the January 10, 2008 falls put Mr. St. Peter reasonably on notice of appellant's claim of injury within 30 days of January 10, 2008. Given that appellant's immediate supervisor had actual notice of the claimed January 10, 2008 injury within 30 days, appellant's claim is considered as timely

¹¹ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death, unless the immediate superior had actual knowledge of the injury or death within 30 days or written notice of injury or death as specified in section 8119 of FECA was given within 30 days. *See supra* notes 7 and 8.

¹² Mr. St. Peter stated, "[Mr.] St. Peter is [also known as] the supervisor and Postmaster. There is no other management or supervisor in the Sac City office...."

¹³ *See* 5 U.S.C. § 8122(a).

filed. The question remains whether such an injury is supported by medical evidence. As OWCP denied appellant's claim for a January 10, 2008 injury as untimely filed, it did not evaluate the medical evidence of record. On remand, it shall evaluate the medical evidence of record to determine whether he sustained an injury and/or disability due to either of the two work-related falls on January 10, 2008. After such development deemed necessary, OWCP shall issue an appropriate merit decision on this matter.

CONCLUSION

The Board finds that appellant timely filed a claim for a work injury on January 10, 2008 and that the case is remanded to OWCP for further development.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2013 decision of the Office of Workers' Compensation Programs is reversed with respect to the finding that appellant's claim for a January 10, 2008 work injury was untimely filed. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: June 18, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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