

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARRY W. PARKER and U.S. POSTAL SERVICE,
PROMENADE FINANCE STATION, Richardson, Tex.

*Docket No. 96-1524; Submitted on the Record;
Issued August 19, 1998*

DECISION and ORDER

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

The issue is whether appellant filed a timely claim for compensation.

On August 29, 1994 appellant filed a claim for a neck injury that occurred on June 6, 1989 when he was assaulted by a coworker. In a decision dated February 21, 1996, the Office of Workers' Compensation Programs found that appellant's claim was not filed within three years of the date of injury and that there was no indication that appellant had notified the immediate supervisor or employing agency that he had sustained an "*employment-related*" injury (original emphasis). That appellant did seek treatment for the incident and that the supervisor was aware of the altercation was insufficient to establish that the supervisor was made aware of both the altercation and its relationship to appellant's federal employment.

The Board finds that the evidence of record is insufficient to establish that appellant's August 29, 1994 claim was timely filed.

Section 8122(a) of the Federal Employees' Compensation Act¹ provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation 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.

¹ 5 U.S.C. § 8122(a).

Section 8119² provides that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day, and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.

Appellant was a distribution window clerk. While performing his duties on June 6, 1989, he made a remark about his coworker receiving a telephone call. The coworker told appellant it was none of his business, which angered appellant. Appellant followed the coworker, whereupon words were exchanged and a physical altercation ensued.

Following the verbal and physical altercation of June 6, 1989, a postal inspector prepared an investigative memorandum dated June 19, 1989. Contained as an exhibit therein was a June 8, 1989 sworn statement from appellant, who indicated that he sustained a neck injury during the altercation: "During the scuffle I injured my neck and right wrist. I also have a bruise inter [sic] upper left leg from the kick, and still sore in the [groin]." The postal inspector submitted the memorandum and exhibits to the postmaster for his consideration and decision as to whether disciplinary action was warranted. On July 5, 1989 the postmaster issued to appellant a notice of proposed removal, which cited the investigative memorandum and appellant's sworn statement. The postmaster provided a copy of the notice of proposed removal to the supervisor of the station.

The filing provisions of the Act require actual knowledge on the part of, or written notice to, the employee's immediate superior. In an undated request for reconsideration received by the Office on March 20, 1995, appellant identified his immediate supervisor not as the postmaster but as one Mr. Styvers. An arbitration decision dated December 26, 1989 also identifies Leonard Styvers as the supervisor of the Promenade Finance Station. The record in this case contains no evidence that Mr. Styvers had actual knowledge or written notice of the injury within 30 days.³ For this reason, the evidence of record is insufficient to establish that appellant's August 29, 1994 claim was timely filed under section 8122(a) of the Act.

² *Id.* § 8119.

³ See *Eddie L. Morgan*, 45 ECAB 600 (1994); *Gray Leane A. Williams*, 44 ECAB 441 (1993); *Sandra N. Phillips*, 43 ECAB 311 (1991).

The February 21, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 19, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member