

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JULIET S. MILLER and U.S. GOVERNMENT,  
Washington, DC

*Docket No. 99-1499; Submitted on the Record;  
Issued August 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs 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 Federal Employees' Compensation Act.

On June 30, 1998 appellant filed a Form WC-3, claim for injury or disability benefits by a civilian American citizen, pursuant to section 5(f) of the War Claims Act of 1948. Appellant indicated on the form that she was in hiding in the Philippines from the Imperial Japanese Government from 1941 until 1945. She claimed on the WC-3 form that she had experienced nervousness, stress, lack of food and medicine, and constant fear and anxiety during her four years in hiding, all of which affected her physically, mentally and emotionally, and had resulted in an emotional condition.

Appellant also submitted a letter to the Office dated May 26, 1998 in which she stated that, when she arrived in the United States following the end of World War II, her teeth were in terrible condition, she had contracted tuberculosis and she was grief stricken because the Japanese occupation forces had killed her three older brothers during the war. She claimed total disability causally related to her wartime experience. In a handwritten, annotated statement located below her typewritten letter, appellant stated:

"In 1956 I became aware of the "War Claims Act of 1948" -- I contacted Washington, D.C. at that time and informed them of my illness due to being in hiding from the imperial Japanese government in the Philippine Islands -- I was told that the money had been put into the U.S. Treasury and (tough luck) they could n[o]t help me. I no longer tried until now, to make claim for injury and disability benefits provided under [the War Claims Act of 1948]."

By letter dated August 17, 1998, the Office requested additional information in support of her claim that she was kept in hiding in the Philippines from 1941 to 1945, in addition to

medical evidence in support of her claim for compensation. Appellant did not respond to this request.

By decision dated October 14, 1998, the Office denied appellant's claim on the grounds that her claim was not filed within the one-year limitation provided by Part 4, Section 400 of the FECA Procedure Manual. The Office stated that appellant was not entitled to waiver of the one-year requirement, which could occur if the claim was filed within five years of injury<sup>1</sup> or death, failure to comply was due to circumstances beyond the control of the individual claiming benefits, the claimant could show sufficient cause for the failure to file within one year, and material prejudice to the interest of the United States did not result from such failure. The Office found that appellant did not qualify for waiver because she did not prosecute her claim with that degree of diligence which an ordinarily prudent person would have exercised in protecting her rights under the same or similar circumstances. The Office noted that appellant stated that she was aware in 1956 of the relationship between the rigors of hiding during World War II and her claimed conditions, but did not file a claim until June 30, 1998.

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.

The entitlement to compensation benefits under the Act<sup>2</sup> for civilian American citizens held by or in hiding from the Imperial Japanese Government is derived from the War Hazards Compensation 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 employees that had injuries resulting from a war-risk hazard were entitled to compensation under the 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>3</sup>

In addition, the Board has held that persons covered under the War Hazards' Compensation Act are afforded the same status and procedural rights as civil employees of the United States under the provisions of the Act.<sup>4</sup> Accordingly, pursuant to the War Claims Act's extension of the War Hazards' Compensation Act to American citizens injured while in hiding from the Imperial Japanese Government, claims filed under section 5(f) of the War Claims Act are subject to the same time limits which applied to claims filed under the provisions of the

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<sup>1</sup> The Office noted that the five-year limitation is a maximum, mandatory period which neither the Board nor the Office has the authority to waive.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Lourdes Harris*, 45 ECAB 545 (1994).

<sup>4</sup> See *John Francis Dolezal*, 9 ECAB 220, 221 (1957).

FECA in effect on January 3, 1948. As with other claims for compensation under the Act, it is appellant's burden to establish her claim.

In claims such as the one presented in the instant case, based on an alleged occupational disease or condition, the time limitation provisions of the FECA begin to run when appellant becomes aware or reasonably should have been aware, of a possible relationship between the alleged conditions and the rigors of hiding from the Imperial Japanese Government.<sup>5</sup> Appellant asserted in her May 26, 1998 statement that she was aware in 1956 that her alleged conditions might be causally related to her hiding from the Imperial Japanese Government. Under the principles stated herein, the five-year time limitation provision for filing a Form WC-3 that applies to the instant case began to run no later than December 31, 1956.

In the present case, appellant has filed a claim for compensation benefits under the Act pursuant to the War Claims Act of 1948, asserting that she sustained tuberculosis, dental injuries, and an emotional condition causally related to her hiding in the Philippines from the Imperial Japanese Government from 1941 to 1945. The evidence establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the rigors of hiding during World War II and her claimed conditions by 1956, but did not file a claim until June 30, 1998.

Even if appellant met the standard of showing that (1) her failure to timely file her claim was due to circumstances beyond her control or that (2) she had sufficient reason for her failure to timely file her claim and material prejudice to the interest of the United States had not resulted from such failure, appellant would not meet the requirement of filing her claim within five years of the date that the time limitation began to run, *i.e.*, 1956. It is well established that the five-year time limitation is a maximum, mandatory period which neither the Office nor the Board has authority to waive, regardless of the reasons for or the circumstances surrounding, the failure to file a claim within the prescribed time.<sup>6</sup> Therefore, as appellant did not file her WC-3 claim with the Office until July 14, 1998, it is barred by the mandatory five-year time limitation.

Lastly, medical treatment may be allowed 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. Appellant did not submit evidence demonstrating that the United States government had notice of injury within one year, or that her immediate superior had timely actual knowledge of the existence of such conditions and their possible relationship to appellant's hiding within 48 hours of the date she stopped hiding in 1945.<sup>7</sup> She provided no indication to the United States government that she had sustained the claimed conditions and their possible relationship to the rigors of her time in hiding from the Imperial Japanese Government until she contacted "Washington DC" in 1956. Thus, the Office properly denied appellant's claim for medical benefits because the evidence of record

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<sup>5</sup> See *Eugene W. Broadway*, 5 ECAB 33, 35 (1952).

<sup>6</sup> *Eugene L. Turchin*, 48 ECAB 391 (1997); *Albert K. Tsutsui*, 44 ECAB 1004 (1993); *Gary W. Hudiburgh, Jr.*, 37 ECAB 423, 425 (1986)

<sup>7</sup> See Federal (FECA) Procedure Manual, *War Claims*, Chapter 4.400.6(c) (September 1994).

does not show that the United States government had the required actual timely notice that appellant's claimed conditions were causally related to her hiding between 1941 and 1945.

Therefore, appellant has not filed her claim for compensation within the applicable time limitation or otherwise filed a claim which would be timely under the Act.

The October 14, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.  
August 14, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member