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<b>MARY CRAWFORD, Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 05-826</b>
	)	<b>Issued: July 1, 2005</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS ADMINISTRATION MEDICAL</b>	)	
<b>CENTER, El Paso, TX, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
ALEC J. KOROMILAS, Chairman  
COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member

On February 23, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' March 4, 2005 nonmerit decision and November 5, 2004 decision denying appellant's emotional disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether the Office properly denied appellant's compensation claim on the grounds that her emotional condition claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

Appellant, a 44-year-old emergency room nurse, filed a Form CA-2 claim for benefits on October 9, 2002 alleging that she developed a stress-related condition caused by factors of her employment. The record indicates that she did not stop work. Appellant stated that she experienced extreme stress when she witnessed two traumatic events: one of her patients committed suicide on January 11, 1994 and a coworker died on August 30, 2000 in the employing establishment emergency room.

By letter dated November 23, 2002, appellant informed the Office that her stress-related conditions of post-traumatic stress disorder and major depressive disorder began January 11, 1994. She also noted that cues and triggers in her work environment frequently caused her to have flashbacks of the suicide, which caused depression and anxiety.

In a report dated November 27, 2002, Dr. Anita A. Larson, an employing establishment occupational health physician, noted that appellant had been treated multiple times from 1996 to the present. She related her history of working in the emergency room in 1994, when a patient pulled out a pistol and shot himself. Dr. Larson stated that daily exposure to the scene in the emergency room as well as other triggers caused appellant flashbacks. As a result of these exposures, she was diagnosed with post-traumatic stress disorder in October 2000.

By decision dated January 17, 2003, the Office denied the claim on the grounds that it was untimely filed. The Office stated that appellant should have been aware of a relationship between her employment and the claimed condition within three years of its occurrence.<sup>1</sup> The Office, therefore, determined that, since the claim was filed on October 9, 2002, more than three years after the date appellant stated that the injury had occurred in 1994, it was not timely filed within the applicable three-year time limit under section 8122.<sup>2</sup>

By letter dated February 11, 2003, appellant requested an oral hearing, which was held on July 22, 2004.

By decision dated November 5, 2004, an Office hearing representative affirmed the January 17, 2003 Office decision. The hearing representative found that, while appellant had filed a claim for occupational disease, her claim was really a claim for traumatic injury because the focus of her claim was the 1994 emergency room suicide incident. The hearing representative noted that, while appellant had “advised that the August 2000 death of her friend and coworker in the emergency room while she was working triggered more flashbacks and nightmares of the shooting” and precipitated appellant’s treatment for depression and post-traumatic stress, she had repeatedly identified the January 11, 1994 events as the cause of her condition.

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<sup>1</sup> The Office stated that appellant was aware or reasonably should have been aware of a relationship between employment factors and the claimed condition by January 11, 1994, the claimed date of injury, but that written notice of the injury was not provided until October 9, 2002.

<sup>2</sup> 5 U.S.C. § 8122.

By letter dated February 2, 2005, appellant requested reconsideration. She did not submit any additional factual or medical evidence with her request.

By decision dated March 4, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions, nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT – ISSUE 1**

Section 8122(a) of the Act states, “An original claim for compensation for disability or death must be filed within three years after the injury or death.”<sup>3</sup> 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 the causal relationship between her employment and the compensable disability.<sup>4</sup> It is a well-settled principle of federal workers' compensation law that, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

In the instant case, appellant stated that she became aware of her stress-related condition on January 11, 1994, the date she began to experience severe emotional stress caused by her witnessing of a patient's suicide in the emergency room. Contrary to the findings made by the Office hearing representative, she has, however, also alleged that her continued work in the emergency room after 1994 caused flashbacks with anxiety and depression. Furthermore, appellant has alleged that she witnessed a coworker/friend die in the emergency room during October 2000, which caused post-traumatic stress disorder. While the Office hearing representative found that her claim was really for a traumatic injury relating to the January 11, 1994 incident, the evidence of record establishes that her claim is for ongoing stress she experienced during her continued work in the emergency room after 1994. The January 11, 1994 incident was the earliest stressful incident appellant experienced at work, but her ongoing work in the emergency room, performing her regularly assigned work duties, caused additional exposure to stressful events including her coworker's death in October 2000. The Board has previously noted that the term “latent disability” refers to an occupational disease or condition produced by continued or repeated stress or strain or other continued or repeated exposure to conditions of the work environment which produce cumulative or increasingly deleterious effect upon the employee, of which she may not be immediately aware.<sup>6</sup>

Appellant was first diagnosed with post-traumatic stress syndrome in October 2000. The fact that post-traumatic stress disorder was only diagnosed in October 2000, following the death

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<sup>3</sup> 5 U.S.C. § 8122(a).

<sup>4</sup> 5 U.S.C. § 8122(b).

<sup>5</sup> *Debra Young Bruce*, 52 ECAB 315 (2001).

<sup>6</sup> *Larry J. Thomas*, 44 ECAB 291 (1992).

of the coworker/friend in the emergency room, leads support to the theory that her disability was latent. The medical evidence of record from Dr. Larson generally supports this theory of latent disability but is not sufficiently well rationalized to meet her burden of proof. On remand the Office shall determine the date on which appellant was last exposed to factors of her employment which contributed to the post-traumatic stress disorder diagnosed in October 2000. After such further development as necessary the Office shall issue a *de novo* decision.<sup>7</sup>

### **CONCLUSION**

The Board finds that the case is not in posture for decision as to whether appellant's claim was filed within the applicable time limitation provisions.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2005 and November 5, 2004 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded to the Office for further development.

Issued: July 1, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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<sup>7</sup> The Board finds that the second issue on appeal is moot as this case is remanded for further development of the evidence.