

On July 27, 2004 appellant, a 45-year-old corrections officer, filed an occupational disease claim alleging that he developed post-traumatic stress disorder due to factors of his federal employment. He stated that he first became aware of his condition and first related it to his federal employment on May 1, 2004. On the reverse of the form, appellant's supervisor indicated that appellant stopped work on March 1, 1995 and first reported his condition to his supervisor on May 1, 2004.

The Office requested additional factual and medical evidence from appellant by letter dated September 15, 2004. Appellant responded and stated that on or about May 1, 2004 he discussed his concerns regarding his tendency to withdraw from people and relationships with a psychiatrist, Dr. Paul Malarik, who at that point attributed his stressors to his experiences and duties as a correctional officer. He stated that everyday at the employing establishment he felt that he could be attacked or killed. Appellant described the employment duties that he felt caused or contributed to his condition. He stated that he was not aware of his emotional condition while employed.

By decision dated May 12, 2005, the Office denied appellant's claim finding that it was not filed in a timely manner. The Office noted that appellant was removed by his employer on March 1, 1995 and that he did not file his claim until July 27, 2004 more than nine years after the date of last exposure to employment factors. The Office found that his supervisor did not have timely notice of his emotional condition within 30 days of March 1, 1995.

Appellant requested an oral hearing on May 17, 2005. On August 26, 2006 he testified that his symptoms slowly came on and he had no idea what they were until 2005 when his symptoms intensified. Appellant noted that he constantly felt vulnerable to attack and needed to remain continuously alert for danger. He noted that his social interactions continued to be limited after his employment ended in 1995 and that he lost friends due to his suspicions of crowds and smaller groups of people. Appellant first sought medical treatment for his symptoms in 2004. He stated that in 2004 he first thought his symptoms could be due to his employment. Appellant stated that he felt like someone was going to suddenly punch him in the face. In response to the hearing representative's questioning, appellant noted that in 1995 his feelings did not seem inappropriate, but after he left the employing establishment environment, appellant slowly began to wonder why he had those feelings.

Following the oral hearing, appellant submitted medical notes from Dr. Malarik. These notes indicated that he had sought a psychiatric evaluation due to a positive depression screen and possible post-traumatic stress disorder beginning on April 28, 2004. Appellant obtained treatment on May 25, July 20, August 31 and October 26, 2004.

By decision dated July 14, 2006, the hearing representative found that appellant reasonably should have been aware of his symptoms as he was clearly aware that he worked in a stressful environment during his active employment. The hearing representative found that appellant's date of last exposure was March 1995 and the time limitation began to run at that time.

LEGAL PRECEDENT

In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act 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 of this title was given within 30 days.”¹

The three-year time period begins to run from the time the employee is aware or by the exercise of reasonable diligence should have been aware, that his or her condition is causally related to the employment. For actual knowledge of a supervisor to be regarded as timely filed, an employee must show not only that the immediate supervisor knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.²

Even if an original claim for compensation for disability or death is not filed within three years after the injury or death, compensation for disability or death may be allowed if written notice of injury or death as specified in section 8119 was given within 30 days. Section 8119 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.³ Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁴

In the case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware, of a possible relationship between his condition and his employment. When an employee becomes aware or reasonably should have been aware that he has a condition which has been adversely affected by factors of his federal employment, such awareness is competent to start the limitation period even though he does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.⁵ Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of the federal employment awareness, the time

¹ 5 U.S.C. § 8122(a).

² *Duet Brinson*, 52 ECAB 168 (2000).

³ *Larry E. Young*, 52 ECAB 264 (2001).

⁴ *Aura L. Harrison*, 52 ECAB 515 (2001).

⁵ *Larry E. Young*, *supra* note 3.

limitation begins to run on the date of the last exposure to the implicated factors.⁶ The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.⁷

ANALYSIS

Appellant, a corrections officer, alleged that his employment duties resulted in post-traumatic stress disorder. He asserted that he was unaware of his condition and its relationship to his employment duties until May 1, 2004. The Office found that the time limitation for filing a claim began to run in March 1995, the date of appellant's last exposure to employment factors. As appellant did not file a claim until July 27, 2004, the Office concluded that his claim was not timely filed within the three-year period of limitation.

Appellant has maintained that he had no knowledge that his federal employment resulted in an emotional condition until his diagnosis in 2004. He testified that, while working at the employing establishment his fears and feelings seemed appropriate. Appellant noted that it was only after leaving the employing establishment that he gradually began to feel that his emotions and responses were inappropriate. He also indicated that his symptoms gradually intensified after he left the employing establishment. Appellant submitted treatment notes from Dr. Malarik indicating that he sought psychiatric treatment beginning on April 28, 2004 due to a positive depression screen. Dr. Malarik diagnosed possible post-traumatic stress disorder at that time.

The Board finds that the evidence does not establish that appellant was aware of the causal relationship between his federal employment and his diagnosed emotional condition of post-traumatic stress disorder until April 28, 2004. There is no medical evidence indicating that appellant sought treatment for his condition prior to this date and no evidence that he was aware of his emotional condition or its relationship to his employment before that date. Therefore, the evidence does not support that he had reason to be aware of his condition and its relationship to his employment.

The hearing representative found that appellant should have been aware of his condition as of 1995 as he had worked in a stressful environment. However, appellant testified that while he was working at the employing establishment, his reactions seemed normal to him. He noted that only after he was no longer working at the employing establishment for a period of time did he gradually begin to realize that his concerns regarding ever present physical attacks were limiting his social interactions, adversely impacting him and that his concerns and reactions were possibly abnormal. In a psychological condition claim, such as this one, the Board acknowledges that the insight of appellant into the appropriateness of his actions, emotions and personal interactions might well be limited as a direct consequence of the diagnosed condition of post-traumatic stress disorder. The Board further finds that it could be difficult for a claimant to become aware and accept that his feelings were the result of an impairing emotional condition.⁸

⁶ *Id.*

⁷ *Debra Young Bruce*, 52 ECAB 315 (2001).

⁸ *Mitchell Murray*, 53 ECAB 601 (2002).

There is no medical opinion evidence or other relevant evidence establishing that appellant should have been aware of his emotional condition prior to 2004. The hearing representative's opinion is based solely on the supposition that all persons who are subjected to stressful circumstances would be continuously open to the possibility that their behaviors, reactions and emotions are abnormal. This supposition exceeds the standard of reasonable diligence stated above. Therefore, the Board finds that appellant's claim was timely filed within the three-year period after April 28, 2004 during which he was first diagnosed with his condition and made aware of its relationship to his federal employment.

CONCLUSION

The Board finds that appellant's claim was timely filed in this latent disability case. There is no evidence to support the Office's conclusion that he should have reasonably been aware of his emotional condition and its relationship to his employment before his diagnosis and treatment on April 28, 2004.

ORDER

IT IS HEREBY ORDERED THAT the July 14, 2006 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 20, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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