

**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. 12-1779
Issued: February 5, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 14, 2012 appellant filed a timely appeal from June 12, 2012 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying his claims for January 10 and April 16, 2008 work injuries. Pursuant to the Federal Employees' Compensation Act¹ (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 and April 16, 2008.

FACTUAL HISTORY

On May 25, 2011 appellant, then a 62-year-old mail carrier, filed a Form CA-1, traumatic injury and claim for compensation, alleging that he injured his right knee and right

¹ 5 U.S.C. §§ 8101-8193.

hip due to two falls at 10:00 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."² Appellant did not stop work on January 10, 2008. He also filed another Form CA-1 on May 25, 2011 claiming that at 11:00 a.m. on April 16, 2008 he slipped on mud at work and sustained a twisting injury to his right knee.³

In letters dated August 9, 2011, the employing establishment controverted appellant's claims for work injuries on January 10 and April 16, 2008 indicating that they were not timely filed. It was noted that he attended a dental appointment on April 16, 2008 and was off work on sick leave for the whole day.

By letters dated September 1, 2011, OWCP informed appellant of the evidence needed to support his claims for injury on January 10 and April 16, 2008. It requested that he submit evidence establishing that he provided timely notification of his claimed work injuries.

In a January 18, 2008 report, Dr. John S. Sinnott, an attending osteopath and Board-certified family practitioner, obtained a history that appellant fell on his left knee on January 10, 2008 while on his delivery route. Appellant reported minimal injury due to this fall, but 30 minutes after the first fall, he fell again and landed on his left hip, hurting his left groin. On examination, he exhibited tenderness of his right hip and right knee. In a January 23, 2008 report, Dr. Sinnott provided a similar account of appellant's reported falls on January 10, 2008. In a March 1, 2012 letter, he indicated that in reviewing his dictation of January 18, 2008 it was obvious that he had inadvertently stated that appellant fell on his left side when he should have stated that he fell on his right side. Dr. Sinnott noted that the examination was consistent with appellant having fallen on his right side.

In an April 18, 2008 report, Dr. Carl E. Toben, an attending osteopath and Board-certified family practitioner, stated that appellant reported being in the mud carrying mail and twisting his right knee the previous day. On May 7, 2008 he stated that appellant reported significant pain in his right ankle "after being at a military funeral." The findings of x-ray testing obtained on May 8, 2008 indicated that appellant reported right ankle pain after he "fell down steps." Various abnormalities were found in his right ankle and foot, including a partial rupture of his right posterior tibial tendon.⁴ On July 10, 2008 Dr. Toben noted that appellant

² Jeffrey St. Peter, postmaster at the employing establishment, at the time appellant's May 25, 2011 claim was filed, completed the supervisor's portion of the form. He indicated that appellant's claim was not timely filed and stated that he did not receive notice of the claimed injury until August 9, 2011. Mr. St. Peter noted, "Carrier made comments during both incidents that he was not wearing ice cleats. Appellant also had an incident at home a couple days earlier where he was scooping snow from his roof and he fell off his ladder. I strongly believe that the claimed injury was sustained at home." Mr. St. Peter indicated that appellant retired effective March 31, 2009.

³ On the supervisor's portion of the form, Mr. St. Peter indicated that appellant's claim was not timely filed and stated that he did not receive notice of the claimed injury until August 9, 2011. He noted, "[Appellant] was not even at work on [April 16, 2008]. He had the day off. Appellant also provided an appointment card for dentist appointment [at] the time he claims the injury took place."

⁴ The findings of May 8, 2008 testing of appellant's right knee showed several abnormalities including a medial meniscus tear. On May 15, 2008 appellant underwent a diagnostic arthroscopy and partial synovectomy of his right knee. It does not appear that the surgery was authorized by OWCP.

reported that on or about April 17, 2008 he was carrying mail and twisted his right knee in the mud while walking. In a September 10, 2009 report, Dr. R.L. Crampton, an attending podiatrist, indicated that his initial visit with appellant was on April 16, 2008 following “an injury to his right foot and leg.”

In a February 24, 2009 statement, Mr. St. Peter indicated that appellant was on sick leave from April 17 to 19, 2008 and was on leave for partial days on April 15 and 16, 2008. Appellant retired on March 31, 2009. The statement contains a handwritten note, presumably provided by appellant, which stated, “I hurt my knee on the morning of the 16th. Then went home.”

In June 25, 2009 statement, Pamela Woelke, former postmaster at the employing establishment, stated, “This is in regards to [appellant] whom I have known and worked with for the past 15 years. I became [p]ostmaster in July of 2000 when [appellant] was a full[-]time carrier in Ida Grove.” She indicated that appellant had always had a problem with casing mail due to an eye injury he received when he was in the service. Ms. Woelke did not discuss either of appellant’s claimed injuries.

In an October 13, 2011 statement, Mr. St. Peter stated that the “supervisor” did not have any direct knowledge of any specific injury incurred by appellant on January 10, 2008. He noted:

“[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. He also notified the [p]ostmaster that he had fallen off of his ladder cleaning snow from his roof two days prior. [Appellant] wrote and signed a note that he was refusing to complete a [Form] CA-1. The supervisor was never informed that the employee was being treated for any injury and there was no OWCP.”

In another October 13, 2011 statement, Mr. St. Peter stated, “The [p]ostmaster has no knowledge of any injured incurred by [appellant] on April 16th, 2008. The employee was not even at work on the day in question. The [p]ostmaster has no knowledge of any treatment for this date, and no OWCP was involved.”

The record contains a memorandum of a telephone call by Mr. St. Peter to OWCP on December 1, 2011: “[Agency] states that[,] although [claimant] reported the work incident, he did not report a work[-]related injury within 30 days from [January 10, 2008].”

In an undated statement received on January 23, 2012, appellant contended that he was at work on April 16, 2008 when he hurt his knee. He filed a complaint in a timely manner, but he filed a second time because the employing establishment claimed it never received his first filing. Appellant waited to file the claim a second time because the employing establishment told him last August that he had to go through the Department of Labor. On a form completed on January 16, 2012, appellant asserted that he never fell off a ladder. An OWCP official noted that, during a January 31, 2012 telephone call to OWCP, appellant stated that he had never scooped snow from his roof or fallen off a ladder at his house. Appellant asserted that his “[agency] is lying and dishonest.”

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.

Appellant disagreed with the decisions and requested a review of the written record before an OWCP hearing representative. He submitted additional medical records and treatment notes, including notes detailing foot problems in April 2008. In an April 8, 2008 note, Dr. Toben indicated that appellant was seen on that date for a foot problem.

In two June 12, 2012 decisions, OWCP's hearing representative affirmed OWCP's February 3 and 9, 2012 decisions finding that appellant did not file timely claims for work injuries on January 10 or April 16, 2008.

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 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

Section 8119 of FECA 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.⁷ Actual knowledge and written notice of injury

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

⁶ 5 U.S.C. § 8122(a).

⁷ *Id.* at § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁸

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

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹

ANALYSIS

Appellant filed a traumatic injury claim on May 25, 2011 alleging that on January 10, 2008 he fell twice while at work and injured his right knee and right hip. He also filed another traumatic injury claim on May 25, 2011 alleging that on April 16, 2008 he slipped on mud at work and sustained a twisting injury to his right knee. OWCP denied appellant's claims for January 10 and April 16, 2008 injuries on the grounds that both of these claims were untimely filed.

Appellant did not file his claim for an April 16, 2008 traumatic injury until May 25, 2011. Therefore, his claim for this injury was not filed within the three-year period of limitation. Appellant's claim for an April 16, 2008 injury would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior had actual knowledge of the claimed April 16, 2008 injury within 30 days or under section 8122(a)(2) if written notice of injury was given to his immediate superior within 30 days as specified in section 8119.¹² He has not presented sufficient evidence that he has satisfied either of these provisions, nor does the record support a finding that he satisfied either requirement with respect to his claimed

⁸ *Laura L. Harrison*, 52 ECAB 515 (2001).

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

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

¹¹ *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹² *See supra* note 6.

April 16, 2008 injury.¹³ For these reasons, the Board finds that OWCP properly denied appellant's claim for an April 16, 2008 injury because it was untimely filed.¹⁴

Appellant did not file his claim for a January 10, 2008 traumatic injury until May 25, 2011 and therefore his claim for this injury was not filed within the three-year period of limitation.

The Board notes, however, that the evidence of record suggests that appellant might have 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. Further development of the evidence is necessary in order to clarify this matter. As noted, OWCP shares in the responsibility to develop evidence.¹⁵

The record contains several statements about the claimed January 10, 2008 injury which require clarification. For example, on appellant's Form CA-1 for the two falls alleged to have occurred on January 10, 2008, Mr. St. Peter stated, "Carrier made comments during both incidents that he was not wearing ice cleats." In an October 13, 2011 statement, Mr. St. Peter stated that the "supervisor" did not have any direct knowledge of any specific injury incurred by appellant on January 10, 2008. He noted, "[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. he also notified the [p]ostmaster that he had fallen off of his ladder cleaning snow from his roof two days prior." Mr. St. Peter further stated that appellant wrote and signed a note that he was refusing to complete a Form CA-1 and that the "supervisor" was never informed that the employee was being treated for any injury and "there was no OWCP." The statements suggest that appellant reported the January 10, 2008 falls (along with some adverse effects) around the time they occurred, although he is vague with respect to precisely when they were reported. Mr. St. Peter also referred to both a supervisor and the postmaster, but he did not provide their identities. He was the postmaster at the time appellant filed his claims on May 25, 2011, but it is not clear from the record whether he was the postmaster on January 10, 2008.

The Board finds that clarification is 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 case shall be remanded to OWCP for further evidentiary development

¹³ Despite appellant's assertions, there is no indication in the record that he provided a statement to his immediate superior such that he satisfied the provisions of sections 8119 and 8122(a) of FECA. *See supra* note 6 and accompanying text. Appellant claimed that he notified his supervisor of the claimed April 16, 2008 injury shortly after it occurred, but the evidence of record does not support this assertion.

¹⁴ On appeal, questioned the veracity (with respect to his claimed April 16, 2008 injury) of the statements of Mr. St. Peter, who was postmaster when he submitted his claim forms on May 25, 2011. Appellant did not adequately explain why he felt that Mr. St. Peter's statements were inaccurate. Mr. St. Peter denied that appellant reported an April 16, 2008 injury to him within 30 days and asserted that appellant was on sick leave and attended a dental appointment on April 16, 2008.

¹⁵ *See supra* note 11.

in this regard. After such development as it deems necessary, OWCP shall issue an appropriate merit decision regarding appellant's claim for a January 10, 2008 work injury.

CONCLUSION

The Board finds that appellant did not timely file a claim for a work injury on April 16, 2008 and that the case is not in posture for decision regarding whether he timely filed a claim for a work injury on January 10, 2008. The case is remanded to OWCP for further development regarding the claim for a work injury on January 10, 2008.

ORDER

IT IS HEREBY ORDERED THAT the June 12, 2012 decision of the Office of Workers' Compensation Programs pertaining to appellant's claimed April 16, 2008 injury is affirmed. The June 12, 2012 decision of OWCP pertaining to his claimed January 10, 2008 injury is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 5, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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