

workload and an unharmonious work environment.² She first became aware that her condition was caused or aggravated by her employment in March 1979. Appellant stated that she failed to file her claim within 30 days because she was “not of sound mind or judgment.” She resigned from the employing establishment on April 18, 1980.

Appellant submitted a June 1, 2011 report from Dr. Denis Mee-Lee, a Board-certified psychiatrist, who stated that she had been under his psychiatric care since 1984. Dr. Lee indicated that her condition had gone from bipolar disorder, manic to schizoaffective disorder, manic “over the years.” Appellant had become more delusional and difficult with time and had not been able to function constructively at home or in the community since the onset of her illness in 1985. Dr. Mee-Lee stated that she did not have “the mental capacity to conduct effectively a spectrum of life’s tasks.”

In a letter dated June 29, 2011, OWCP informed appellant that the evidence of record did not establish that her claim was timely or that she had actually experienced the claimed employment factors. Appellant was advised to submit additional information showing that she had timely notified her supervisor of her claimed work injury. In a separate letter dated August 3, 2011, OWCP asked the employing establishment to provide information from a knowledgeable supervisor as to the accuracy of appellant’s claims.

By letter dated August 17, 2011, the employing establishment stated that appellant had resigned on April 18, 1980, indicating that she intended to go back to school. Their personnel file did not contain any notes regarding complaints of job stress and there was no record that an Equal Employment Opportunity (EEO) complaint had ever been filed. The establishment was unable to obtain information from appellant’s supervisor, as he was deceased.

The record contains personnel records for the period November 12, 1976 to May 12, 1980. A Form SF-50 dated May 12, 1980 reflected that appellant resigned from the employing establishment effective April 18, 1980.

On August 29, 2011 OWCP received a CA-7 dated June 25, 2011 requesting a schedule award.

By decision dated June 22, 2012, OWCP found that appellant’s claim was not timely filed within three years of the date of last exposure and the record did not establish that her immediate superior had actual knowledge of the injury within 30 days.

LEGAL PRECEDENT

Section 8122(a) of FECA states that an original claim for compensation for disability or death must be filed within three years after the injury or death.³ 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

² Appellant’s emotional condition claim number (xxxxxx319) was denied as untimely.

³ 5 U.S.C. § 8122(a).

the employment and the compensable disability.⁴ The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.⁵

A claim, however, would still be regarded as timely under section 8122(a)(1) of FECA if the immediate superior had actual knowledge of the injury 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.⁶ Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.⁷

The time limitations in section 8122(a) and (b) do not (1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed, (2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative, or (3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.⁸

ANALYSIS

In the present case, appellant stated that she became aware of her emotional condition and its relationship to her federal employment in March 1979, approximately one year prior to her resignation from the employment establishment on April 18, 1980. The time limitation for filing the claim began to run on the date of her last exposure on April 18, 1980.⁹ Appellant had three years from April 18, 1980 to timely file her claim. As her claim was not filed until June 20, 2011, it was not timely filed within the three-year period of limitation.

The record does not contain any evidence that appellant's supervisor had actual knowledge of her condition or of its relationship to her employment. The employing establishment records do not reveal that appellant ever complained of job stress or that she ever filed an EEO complaint. The Board notes that there are no contemporaneous medical reports of record to reflect that she notified her supervisor of her claimed condition. Therefore, there is no evidence that appellant's supervisor was reasonably on notice of an on-the-job injury.¹⁰ The record does not support that appellant satisfied this requirement.¹¹

⁴ *Id.* at § 8122(b).

⁵ *J.P.*, 59 ECAB 178 (2007); *Linda J. Reeves*, 48 ECAB 373 (1997).

⁶ 5 U.S.C. § 8122(a)(1) and (2). *See Hugh Massengill*, 43 ECAB 475 (1992).

⁷ *Laura L. Harrison*, 52 ECAB 515 (2001).

⁸ 5 U.S.C. § 8122(d).

⁹ *See supra* note 4 and accompanying text.

¹⁰ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹¹ *J.P.*, *supra* note 5.

Appellant alleged that her failure to file a timely claim should be excused due to the fact that she was not of sound mind or judgment. The Board has held that it is her burden to show that she is incompetent for a given period by submitting medical evidence stating that her condition was such that she was not capable of filling out a claim form or of otherwise furnishing the relatively simple information necessary for filing a claim and satisfying the limitation requirements.¹²

In support of her assertions of mental incompetence, appellant submitted a June 1, 2011 report from Dr. Mee-Lee, who stated that her condition had gone from bipolar disorder, manic to schizoaffective disorder, manic “over the years,” that she had become more delusional and difficult with time and had not been able to function constructively at home or in the community since the onset of her illness in 1985. Dr. Mee-Lee stated that she did not have “the mental capacity to conduct effectively a spectrum of life’s tasks.” He did not, however, specify the precise period of impairment or state that appellant was so incapacitated that she was unable to fill out a compensation claim form. Moreover, as Dr. Mee-Lee admittedly did not begin treating appellant until 1984, he had no direct knowledge of her competency prior to that time. His report is, thus, insufficient to establish that she was mentally incompetent to file a claim form for three years after April 18, 1980. Therefore, appellant has not submitted sufficient medical evidence to meet her burden of proof to establish mental incompetence.¹³

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant’s claim for an emotional condition was not timely filed under the applicable provisions of FECA.

¹² See *Alicia Kelly*, 53 ECAB 244 (2001) (mental incompetence must be established through the submission of medical evidence); *Paul S. Devlin*, 39 ECAB 715 (1988).

¹³ See *Alicia Kelly*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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