

ANASTACIO QUILES	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ARMY AND AIR FORCE	)	DATE ISSUED:_____
EXCHANGE SERVICE	)	
	)	
Self-Insured	)	
Employer-Respondent	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of E. Earl Thomas, Administrative Law Judge, United States Department of Labor.

Rafael A. Oliveras Vera, Hato Rey, Puerto Rico, for claimant.

Charles A. Cordero (Cordero, Miranda & Pinto), San Juan, Puerto Rico, for self-insured employer.

Before: BROWN, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand (81-LHC-1387) of Administrative Law Judge E. Earl Thomas rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). We must affirm the administrative law judge's findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

This is the second time this case has come before the Board. To recapitulate, claimant worked for employer from 1972 until July 19, 1977, as a service station attendant. He was placed on sick leave until August 20, 1977, and then was placed on leave without pay until August 29, 1978, when he was terminated due to his health. He filed a claim for permanent total disability benefits on February 6, 1981, alleging he has suffered from work-related mental and physical problems.

In his initial decision, the administrative law judge determined that claimant was aware or should have been aware of the relationship between his injuries, his disability and his employment, pursuant to Section 13(a), 33 U.S.C. §913(a), as of November 17, 1977, when he filed a claim for

Social Security disability benefits. *See* Emp. Ex. 13. He also found that although employer had notice of claimant's injury on November 27, 1978, and did not file a Section 30(a), 33 U.S.C. §930(a), report of injury with the district director until December 11, 1978, the claim is nonetheless time-barred because it was filed more than one year after employer's report was filed.<sup>1</sup> On reconsideration, the administrative law judge reaffirmed his findings and alternatively found that the latest possible date on which claimant became aware of the relationship between his injury, disability, and employment was on November 27, 1978, when he notified employer.

On appeal, claimant contended his mental problems prevented him from becoming aware of the relationship between his illness and his employment; therefore, the administrative law judge erred in determining that the claim is time-barred. The Board remanded the case for consideration of whether claimant was mentally incompetent, thus tolling the statute of limitations pursuant to Section 13(c), 33 U.S.C. §913(c). The Board also ordered the administrative law judge to give claimant the benefit of Section 20(b), 33 U.S.C. §920(b), which presumes a claim is timely. *Quiles v. Army & Air Force Exchange Service*, BRB No. 83-2179 (May 18, 1987) (unpublished).

On remand, the administrative law judge concluded that claimant was mentally competent on November 17, 1977, and on November 27, 1978. Further, he found claimant to be mentally competent during the one-year periods following these dates. He relied on psychiatric and lay evidence which indicates that claimant was logical and coherent. Additionally, the administrative law judge noted there is a general presumption of mental competence and that claimant presented no evidence establishing mental incompetence. Decision and Order on Remand at 1-2. Consequently, the administrative law judge determined that Section 13(c) is inapplicable. With regard to Section 20(b), the administrative law judge found that, as proper notice of injury is not at issue, it is not necessary to invoke the Section 20(b) presumption. Decision and Order on Remand at 2. Therefore, he concluded that the statute of limitations expired prior to the filing of claimant's claim for compensation. Claimant appeals the administrative law judge's decision on remand, and employer responds, urging affirmance.

Claimant contends he was mentally incompetent and, therefore, the time for filing a claim under the Act should have been tolled. Additionally, he contends the administrative law judge erred in evaluating the evidence and concluding that he was mentally competent during the relevant periods. Employer responds, arguing that the administrative law judge's findings are supported by substantial evidence.

A claim under the Act is presumed to be timely filed. 33 U.S.C. §920(b). This presumption applies to both the Section 12 notice of injury and the Section 13 claim for compensation. *Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991); *Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). The administrative law judge erred in presuming it applies to only the notice of injury and, therefore, in failing to invoke the presumption. Consequently, claimant is entitled to the presumption that his claim was filed in a timely manner. To overcome the presumption,

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<sup>1</sup>The administrative law judge determined that the timeliness of the notice of injury was not at issue as employer failed to raise it at the first hearing. 33 U.S.C. §912(a).

employer must present substantial evidence to the contrary.

Under the Act, a claim in a traumatic injury case must be filed within one year of the date of injury, which occurs when claimant becomes aware that his injury has resulted in an impairment to his earning capacity. 33 U.S.C. §913(a); *Abel v. Director, OWCP*, 932 F.2d 819, 24 BRBS 130 (CRT) (9th Cir. 1991); *Love v. Owens-Corning Fiberglas Co.*, 27 BRBS 148 (1993). A claim for compensation in an occupational disease case must be filed within two years of the date on which claimant became aware of the relationship between his employment, his disability, and his disease. 33 U.S.C. §913(b)(2); *Love*, 27 BRBS at 150. Section 13(c) provides that the time limitations for filing a claim shall not apply if a person is mentally incompetent and has no guardian or other authorized representative. Once a guardian or other authorized representative has been appointed, the time begins to run. 33 U.S.C. §913(c); 20 C.F.R. §702.222(a).

In this case, the administrative law judge relied on psychiatric and lay evidence which establishes that claimant was logical and coherent during the relevant time period. Both Drs. Lugo and Santiago, on whom the administrative law judge relied, diagnosed claimant as having "a depressive reaction - psychotic." Dr. Lugo's records indicate that claimant was hostile, suffered hallucinations, and had suicidal and homicidal tendencies; however, he indicates that on October 4 and 13, 1977, claimant was logical and coherent, approachable and interested in returning to work. Cl. Ex. 10. Further, his records demonstrate that between March and September 1979, claimant was logical, coherent, and oriented. Cl. Exs. 10-11. Dr. Santiago interviewed claimant on December 8, 1979, and found him to be coherent and logical. Cl. Ex. 1; Tr. II at 19. The administrative law judge noted that, beginning in 1977, when claimant underwent examinations he always related his problems to his employment. *See* Decision and Order at 5; Decision and Order on Recon. at 3; Cl. Exs. 6, 10, 15; Tr. I at 29, 39, 42-43, 102; Tr. II at 25, 113; Tr. III at 38. Additionally, employer's investigator testified that claimant appeared to be normal both mentally and physically,<sup>2</sup> and he testified that claimant applied for a new driver's license on October 2, 1978. Tr. III at 200, 202.

Generally, mental incompetence has been defined as an inability to manage ordinary affairs or to function in society. *Lonchar v. Zant*, 978 F.2d 637, 641 (11th Cir. 1992), *reh'g denied*, 983 F.2d 1084, *cert. denied*, 507 U.S. 956 (1993) (quoting *Rees v. Peyton*, 384 U.S. 312, 314 (1966)); *Street v. Vose*, 936 F.2d 38 (1st Cir. 1991), *cert. denied*, 502 U.S. 1063 (1992); *Lawson v. Glover*, 957 F.2d 801 (11th Cir. 1987); *Smith v. Smith*, 830 F.2d 11 (2d Cir. 1987); *Lopez v. Citibank, N.A.*, 808 F.2d 905 (1st Cir. 1987); *United States v. Portland Trust & Savings Bank*, 140 F.2d 708 (9th Cir. 1944). There is no evidence in the record which indicates that claimant was unable to manage ordinary affairs or to function in society. *Cf. Hoage v. Terminal Refrigerating & Warehousing Co.*, 78 F.2d 1009 (D.C. Cir. 1935) (D.C. Circuit held claimant incompetent under Section 13(c) because evidence demonstrated his conduct was abnormal, he had a serious mental disturbance, he had lost control of his mental faculties, and he had been adjudged of unsound mind). The record supports the administrative law judge's finding that claimant was logical and coherent. Thus, despite claimant's

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<sup>2</sup>Claimant was placed under surveillance beginning on June 27, 1980. *See* Emp. Exs. 23-25; Tr. III at 203, 208.

psychiatric problem, it is rational for the administrative law judge to have concluded that claimant was mentally competent and should have been able to file a claim for compensation within the requisite time. 33 U.S.C. §913.

Although the administrative law judge erred in failing to invoke the Section 20(b) presumption, his error is harmless. Employer presented sufficient evidence to overcome the presumption and demonstrate that claimant's 1981 claim was not filed in a timely manner. Therefore, we affirm the administrative law judge's conclusion that claimant, at the latest, should have been aware of the relationship between his illness and his employment by November 27, 1978, and should have filed his claim by December 11, 1979, one year after employer filed its Section 30(a) report.<sup>3</sup> Consequently, we affirm the administrative law judge's denial of benefits.<sup>4</sup>

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<sup>3</sup>Even using the two-year statute of limitations governing cases involving occupational diseases, 33 U.S.C. §913(b)(2), claimant's claim is time-barred.

<sup>4</sup>In light of our decision, we need not address claimant's remaining arguments.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

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JAMES F. BROWN  
Administrative Appeals Judge

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NANCY S. DOLDER  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge