

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DARRYL E. MATTHEWS and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Los Angeles, Calif.

*Docket No. 96-1602; Submitted on the Record;  
Issued August 27, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant filed his claim for compensation within the three-year statutory limitation provisions of the Federal Employees' Compensation Act.

On July 13, 1993 appellant filed a claim for compensation, alleging that in 1983 he pulled his back while working as a laborer at the employing establishment. He indicated that he also had a mental breakdown while working for the employing agency at another establishment. He stated that he had chronic back problems and bipolar disorder. He reported that he first became aware that his injury was related to his employment in 1985. He stated that he filed the claim in 1985 but the claim was not processed at that time. In a January 10, 1994 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury had not been established. Appellant requested a hearing before an Office hearing representative. In a June 29, 1994 decision, issued without a hearing, an Office hearing representative found that the Office was premature in finding that appellant had failed to establish that his medical conditions were causally related to factors of his employment. He stated that, before developing any other issue in the claim, the Office must first determine whether the claim had been timely filed. He noted that appellant claimed he injured his back in 1983, last worked for the employing establishment on March 8, 1985, and claimed that he related his conditions to his employment in 1985. The hearing representative concluded that appellant's claim had not been filed within the three-year time limitation provisions of the Act. He therefore set aside the Office's January 10, 1994 decision and remanded the case for a determination of whether appellant's claim had been timely filed. He stated appellant should be allowed an opportunity to present proof that he filed a written claim prior to December 31, 1988 or that his immediate supervisor had actual knowledge of the occurrence of an employment injury within 30 days of the injury. In an August 23, 1994 decision the Office denied appellant's claim on the grounds that the claim was not timely filed. Appellant requested reconsideration. In a November 7, 1994 decision, the Office denied appellant's request for reconsideration on the grounds that his request neither raised substantive legal questions nor included new and relevant evidence and therefore was insufficient to warrant review of the Office's prior decision. Appellant appealed to the

Board but subsequently withdrew his appeal to seek further reconsideration by the Office.<sup>1</sup> In an October 24, 1995 merit decision, the Office denied appellant's request for modification of its prior decisions.

The Board finds that appellant did not timely file a claim for compensation within the three-year time limitation provisions of the Act.

Section 8122 of the Act<sup>2</sup> states that an original claim for compensation must be filed within three years after the injury for which compensation is claimed.<sup>3</sup> A claim may be allowed notwithstanding the time limitation if the employee's immediate supervisor had actual knowledge of the injury within 30 days of its occurrence, or if written notice of the injury was given within 30 days pursuant to 5 U.S.C. § 8119.<sup>4</sup>

In the case of a latent disability, the time for filing the claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, that his disability is causally related to his employment.<sup>5</sup> In such a case the time for giving notice of injury begins to run when the employee knows, or reasonably should have known, that he has a condition causally related to his employment, whether or not there is a compensable disability.<sup>6</sup>

Appellant stated that he injured his back while lifting in 1983. As this would be a traumatic injury, the time limitation would begin to run as the date of the injury which would be no later than December 31, 1983. There is no indication in the case record that appellant filed a claim for a traumatic injury to his back by December 31, 1986 or prior to his July 12, 1993 claim. As appellant had not filed a claim for a traumatic back injury within three years of the back injury, his claim for a traumatic back injury was untimely.

Appellant also did not make a timely claim for any occupational disease. He indicated that his work aggravated his back condition and his preexisting bipolar disorder. He stated that he first related his condition to his employment in 1985. As noted above, for time limitation purposes under the Act, time begins to run from the time a claimant first relates his condition to factors of his employment. If a claimant continues to work after the time he first relates his condition to his employment, then time begins to run on the date of last exposure to the factors of employment which he claims were causally related to his occupational disease.<sup>7</sup> Appellant stopped working on March 8, 1985 which would be his date of last exposure to any employment

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<sup>1</sup> Docket No. 95-941 (Order Dismissing Appeal issued July 14, 1995).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> 5 U.S.C. § 8122(a).

<sup>4</sup> 5 U.S.C. § 8122(a)(1)-(2).

<sup>5</sup> 5 U.S.C. § 8122(b).

<sup>6</sup> *Id.*

<sup>7</sup> *Garyleane A. Williams*, 44 ECAB 441 (1993).

factor which may have aggravated his back or bipolar conditions. He stated that he first related his conditions to his employment in 1985 which would be as late as December 31, 1985. There would therefore begin to run on the latter date. As appellant's claim was not filed until July 13, 1993, over seven years after time began to run, his claim was untimely as it was not filed within the three-year time limitation specified by the Act.

Appellant quit his job with the employing establishment in Los Angeles, California and then moved to Gainesville, Florida. He was reinstated in a career condition appointment as a food service worker on February 26, 1985 but his employment was terminated March 8, 1985 due to disability. In an April 4, 1985 statement, a supervisor at the employing establishment indicated that on the first day of work appellant was assigned a position as loader. The official noted that appellant was very slow. He then related that he had back problems and was receiving disability. She noted that appellant was assigned to a pallet position to eliminate his having to bend after he complained about his back and the employing establishment found that he was receiving disability. He then stated that he had informed his physicians during his preemployment physical examination on how it bothered him to bend or use his back strenuously. The supervisor stated that when he did pellets, which involved catching dishes, someone had to be assigned to catch dishes for him. She noted that appellant complained to coworkers about his back and discussed how his current assignment was different compared to other assignments with the employing establishment. The evidence shows that appellant was experiencing back pain while working with the employing establishment. Yet there is no evidence that appellant specifically gave notice to his supervisor at any time that he attributed his back pain to his employment. As appellant did not provide timely notice to his supervisor that he had sustained an occupational injury in the performance of his duties or otherwise put his supervisor on reasonable notice for a claim for occupational disease, his claim cannot be considered to have been timely filed through timely notice to his supervisor.<sup>8</sup>

Appellant submitted an April 24, 1995 statement from Francenia L. Rivers, a contact representative for the U.S. Department of Labor in Jacksonville, Florida. She stated that in 1985 appellant filed a timely workers' compensation notice of injury to the California Department of Labor. She commented that she did not recall what the injuries were but indicated that appellant was assisted in completing the forms and mailing them timely. She related that appellant returned to follow up on his claim but she was unsuccessful in finding the whereabouts of appellant's claim when she called California officials. The filing of a claim with the wrong agency does not toll the time-limitation period. Section 8121(2) of the Act provides that a claim for compensation "shall be delivered to the Office of the Secretary of Labor or an individual whom the Secretary may designate by regulation."<sup>9</sup> Pursuant to regulations governing the administration of the Act, the responsibility for implementation of the Act was delegated and assigned to the Director of the Office.<sup>10</sup> Therefore a filing of a workers' compensation claim with a state agency was not a filing of a claim for compensation as required by the Act. The

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<sup>8</sup> *Eddie L. Morgan*, 45 ECAB 600 (1994).

<sup>9</sup> 5 U.S.C. § 8121(2).

<sup>10</sup> 20 C.F.R. § 10.2.

statement of Ms. Rivers shows that appellant filed a claim for workers' compensation with the California Department of Labor. This does not constitute a proper claim filed under the Act and does not toll the time limitations.

The decision of the Office of Workers' Compensation Programs, dated October 24, 1995, is hereby affirmed.

Dated, Washington, D.C.  
August 27, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member