

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA C. STEWART and U.S. POSTAL SERVICE,
MAIN POST OFFICE, New Orleans, La.

*Docket No. 96-2120; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation on the grounds it was not timely filed under the three-year time limitation of section 8122(a) of the Federal Employees' Compensation Act.

On September 4, 1995 appellant, then a 47-year-old former letter sorting machine clerk, filed a claim alleging that she sustained schizophrenia and "two nervous breakdowns" necessitating hospitalization due to "constant and consistent harassment" at work on or before January 15, 1986, the day she was terminated from federal employment.¹

Appellant's removal from federal employment occurred after a number of incidents beginning in 1981. An August 1982 hospital discharge report indicates that appellant was fired from the employing establishment in February 1981 for falsifying documents relating to an occupational injury, but was reinstated after a hearing.² The employing establishment issued appellant a November 8, 1983 notice of removal due to her November 7, 1983 physical assault on a co-worker. With intervention of a union representative, the removal was changed to a 14-day suspension, with a one-year probationary period beginning December 23, 1983. The employing establishment issued a December 12, 1985 notice of removal, effective January 15, 1986, due to appellant's disruptive behavior on December 6, 1985, failing to follow supervisory instructions on January 30 and October 24, 1985, and her history of suspension for misconduct.

Appellant was hospitalized from November 20 to December 5, 1986 for treatment of schizophrenia, approximately 10 months following her removal from federal employment. She was discharged to home on medication as of December 5, 1986 with a diagnosis of chronic

¹ In an October 30, 1995 letter, the employing establishment controverted appellant's claim on the grounds that it was not timely filed.

² Appellant submitted records of psychiatric treatment and hospitalizations from 1980 to 1982.

paranoid schizophrenia. Appellant participated in an outpatient treatment program with medication monitoring in December 1986 and was rehospitalized twice in January 1987 for treatment of schizophrenia and adjustment of her medications.

In a February 23, 1987 report, an attending psychiatrist diagnosed schizophrenia and released appellant to return to work.

In a March 10, 1988 note, Ms. Johnetta Elow, appellant's former supervisor, stated that appellant had been removed from federal service and "[h]er appeal rights [were] being exercised."

There is no information of record regarding appellant's mental condition from 1988 to 1994. Appellant submitted hospital clinic chart notes regarding treatment in 1995 for hypertension, diabetes, skin problems, and schizophrenia. In a September 7, 1995 report, Dr. Sahn Nguyen, an attending psychiatrist, noted appellant's participation in an outpatient counseling and medication program for treatment of schizophrenia.

In a January 2, 1996 letter, the Office advised appellant that under section 8122(a) of the Act, all claims had to be filed within three years of the date of injury, and requested that she provide a detailed statement as to why she had delayed in filing her claim.³

Appellant replied by January 27, 1996 letter, asserting that she was unable to "handle [her] personal business" due to "mental disability," and was unable to "aid in [her] defense or understand information concerning EEO [Equal Employment Opportunity] matters or [her] rights [under] injury compensation laws." Appellant stated that her supervisor, Ms. Elow, was aware of her history of mental illness, but that she did not tell Ms. Elow that she believed her illness was job related as she feared harassment or that she would lose her job.

By decision dated March 26, 1996, the Office denied appellant's claim on the grounds that it was not timely filed. The Office found that appellant's assertion of mental incapacity was unfounded, as she appealed her removal in March 1988, and thus evinced a knowledge of claims procedures.

The Board finds that the Office properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act.

Section 8122(a) of the Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."⁴ Section 8122(b) provides that in latent disability cases, the time limitation does not begin to run until the claimant is aware, or

³ In a January 2, 1996 letter, the Office requested that the employing establishment provide information regarding the delay in appellant's filing her claim. The employing establishment replied by February 5, 1996 letter that no information could be provided as appellant had been removed from service more than eight years ago, and there were no co-workers or other employees familiar with appellant's claim.

⁴ 5 U.S.C. § 8122(a).

by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.⁵ 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.⁶

In the present case, the time limitation for filing a claim began to run on January 15, 1986, the date that appellant was last exposed to the employment conditions which she alleged caused her emotional condition. Since appellant did not file a claim until September 4, 1995, it was not timely filed within the three-year period of limitation.

Appellant has contended that the time limitations of sections 8122(a) and 8122(b) do not run against her due to the fact that she was incompetent. Section 8122(d)(2) provides that the time limitations of sections 8122(a) and 8122(b) do not “run against an incompetent individual while he is incompetent and has no duly appointed legal representative.”⁷

Appellant submitted medical reports relating to psychiatric hospitalizations and treatment for chronic paranoid schizophrenia from November 20, 1986 to February 27, 1987, when she was released to return to work by her attending psychiatrist. This indicates that appellant was not incompetent as of that date, and could have pursued a compensation claim. Also, the record indicates that in March 1988, appellant exercised appeal rights regarding her January 15, 1986 removal from federal employment. This indicates that appellant was able to manage affairs relating to a claim against the employing establishment for wrongful termination, and thus would have been able to accomplish the relatively straightforward tasks of obtaining and completing a compensation claim form.

Thus, appellant has not submitted evidence establishing that she was incompetent at any time within the meaning of the Act after February 27, 1987 through the end of the three-year period beginning January 15, 1986. The Board has held that it is appellant’s 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 form or of otherwise furnishing the simple information necessary for filing a claim and satisfying the limitation requirements.⁸ The medical reports do not establish that appellant’s condition rendered her incapable of performing these or similar tasks such that she would be considered incompetent within the meaning of the Act for the entire three-year interval.⁹ Moreover, the medical record indicates that appellant was competent to manage her own affairs as early as February 27, 1987, when she was released to

⁵ 5 U.S.C. § 8122(b).

⁶ *Charlene B. Fenton*, 36 ECAB 151, 157 (1984); *Gladys E. Olney*, 33 ECAB 1643, 1645 (1982).

⁷ 5 U.S.C. § 8122(d)(2).

⁸ *Paul S. Devlin*, 39 ECAB 715, 726 (1988).

⁹ Furthermore, appellant has not shown that she is entitled to have the time limitations toll due to “exceptional circumstances” as provided by section 8122(d)(3) of the Act. See 5 U.S.C. § 8122(d)(3). For instance, an “exceptional circumstance” recognized by the Secretary of Labor is where an employee is a prisoner of war. Appellant has not shown that she was under that type of circumstance. See *Paul S. Devlin*, supra note 8 at 726.

return to work. Therefore, appellant has failed to show that the time limitations of sections 8122(a) and 8122(b) do not run against her.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if her immediate superior had actual knowledge of the claimed 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.¹⁰

In the present case, appellant's claim would be timely if her immediate superior had actual knowledge of the injury within 30 days of January 15, 1986. However, the record indicates that appellant's immediate superiors did not receive medical evidence within 30 days of the claimed injury which would put them on notice that appellant sustained an employment-related injury. Additionally, appellant stated she did not inform her supervisor that she believed her mental condition to be work related due to fear she would be harassed or lose her job. Thus, appellant has not established that her superiors were reasonably on notice of a possible work-related injury or condition within 30 days of January 15, 1986.

For these reasons, the Office properly denied appellant's compensation claim on the grounds that she did not establish that her claim was filed within the applicable time limitation provisions of the Act.

The decision of the Office of Workers' Compensation Programs dated March 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
July 2, 1998

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).