

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JORGE CASTRO and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, San Juan, P.R.

*Docket No. 97-862; Submitted on the Record;
Issued January 6, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant's claim for compensation is barred by the time limitation provisions of the Federal Employees' Compensation Act.

The Board has duly reviewed the record in this case and finds that appellant's claim is barred by the applicable time limitation provisions of the Act.

Section 8122 of the Act¹ states that an original claim for compensation must be filed within three years after the injury for which compensation is claimed.² 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. § 8119.³ 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.⁴ 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.⁵ The remaining exceptions to the three-year limitation are that time does not begin to run against a minor until he reaches the age of 21 or has a legal representative appointed; that time does not run against an incompetent individual while he is incompetent and has no appointed legal representative; and that time does

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. §§ 8122(a)(1)-(2).

⁴ 5 U.S.C. § 8122(b).

⁵ *Id.*

not run against an individual whose failure to comply is excused by the Secretary on the grounds that timely notice could not be given because of exceptional circumstances.⁶

The facts in this case indicate that on August 2, 1996 appellant, then a 44-year-old industrial equipment mechanic, filed an occupational disease claim, Form CA-2, alleging that his cervical spine disease was employment related. He stated that he first became aware of the condition on December 15, 1991 when he felt a crack in his neck while standing on a ladder tightening a sprinkler head.⁷ On the reverse of the claim form, a supervisor, Luis F. Ortiz, stated that the accident had not been reported to him at the time it happened. Appellant stopped work on June 28, 1996. In a statement dated August 5, 1996, appellant stated that since the incident in late 1991, he had had sharp pain and numbness in his arms and neck with constant headaches.

By letter dated September 5, 1996, the Office of Workers' Compensation Programs informed appellant that it was unclear whether he was claiming that his current condition was due to the incident in 1991 and, if so, he should file a CA-1 claim, notice of traumatic injury, along with a medical report that supported that his condition was causally related to the 1991 incident. The Office then informed him of the type evidence necessary to support his claim if he were claiming that his condition was due to general job duties. In response appellant submitted a Form CA-1 dated August 7, 1996 in which he alleged that on December 15, 1991 he injured his cervical spine while standing on a ladder tightening a sprinkler head. On the reverse of the claim form, Mr. Ortiz stated that appellant did not report the accident to him until June 28, 1996. Appellant also submitted medical evidence.

By decision dated November 12, 1996, the Office denied the claim on the grounds that the claim had not been timely filed. In the attached memorandum, the Office noted that, while appellant was claiming a traumatic injury, if he should later claim that his condition developed over a period of time, the current medical evidence was insufficient to establish causal relationship.

In the instant case, appellant stated on his claim form that his neck condition was due to a December 12, 1991 employment incident. He did not file a claim until August 2, 1996 which is clearly beyond the end of the time-limitation period which would have ended on December 12, 1994. Likewise, while his claim would be regarded as timely under 5 U.S.C. § 8122 if his immediate superior had actual knowledge of the injury or illness and its relationship to the employment within 30 days, there is no evidence of record here to indicate that appellant's immediate superior had actual knowledge of the alleged injury. In fact, his supervisor, Mr. Ortiz, indicated on both claim forms that he had no knowledge of the injury until the summer of 1996. Further, appellant's failure to file his claim within the time limitations cannot be excused on the grounds of incompetence as there is no indication in the record that appellant was incapacitated from filing a claim within the time limitations of the Act. Additionally, there are no "exceptional circumstances" within the meaning of section 8122(d)(3) which would permit the Office to excuse appellant's failure to comply with the time limitation requirements.

⁶ 5 U.S.C. § 8122(d).

⁷ Appellant also indicated that he became aware the condition was employment related in November 1991.

For the foregoing reasons, the Board finds that appellant's claim was not timely filed in accordance with the three-year time limitation provision of 5 U.S.C. § 8122.

The decision of the Office of Workers' Compensation Programs dated November 12, 1996 is hereby affirmed.

Dated, Washington, D.C.
January 6, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member