

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANNE C. BROOKS and U.S. POSTAL SERVICE,
POST OFFICE, Gary, IN

*Docket No. 98-602; Submitted on the Record;
Issued November 29, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issues are: (1) whether appellant's claim is barred by the time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a reconsideration under 5 U.S.C. § 8128(a).

On May 25, 1997 appellant, then a 34-year-old former clerk carrier, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her torn maniscus (sic) in her knee, fallen arches, spurs and carpal tunnel syndrome were due to her federal employment. She indicated that on February 11, 1994 she first realized her condition was aggravated by her employment.¹ Regarding the delay in filing her claim, appellant noted that she had been terminated from her employment, unemployed for months "due to criminal acts by" her supervisors and that her paperwork had been thrown in the garbage.

In a letter dated July 16, 1997, the Office requested that appellant provide additional factual and medical evidence to support her claim. The Office also requested documentation confirming her allegation of criminal acts by her supervisors.

Appellant responded to the Office's request in a letter dated July 24, 1997 and submitted medical and factual evidence in support of her claim. In support of her claim, appellant submitted an article titled "Doctors must show patients they care;" an article on light-duty variables; an article entitled "TE takes responsibility for customer satisfaction;" sections 540 and 541 regarding employee benefits; August 20, 1993 treatment notes; article regarding postal supervisors being held accountable for their behavior; pages from the Workers' Compensation

¹ Appellant, on the form, wrote the date July 14, 1993 above February 11, 1994, in response to the question as to when she first realized her condition was caused or aggravated by her employment. Under the date she first became aware of the disease or illness, appellant wrote February 11, 1994 and noted that she had recurrences of disability on February 14, 1993 and May 15, 1997.

Guide; a May 6, 1996 arthritis functional capacity questionnaire; a July 4, 1997 receipt from a medical clinic; a bill for an x-ray taken on June 5, 1997; a copy of a March 13, 1995 U.S. Treasury check; an emergency room record dated August 20, 1993; an October 26, 1993 notice of an unpaid bill from the Lakeshore Health System for her August 20, 1993 admission; a May 23, 1997 routing slip from Ken Taylor, human resource specialist; a January 17, 1995 letter from the Office accepting contusion of the left knee for a July 13, 1993 injury; a newspaper article on the employing establishment bonuses which appellant annotated as bribery, a page on theories of employment discrimination; Section VII, retaliation, annotated by appellant as criminal act, exhibit 2; an equal employment opportunity complaint dated September 28, 1994; a notice of appeal/petition to the Equal Employment Opportunity Commission (EEOC) dated July 22, 1997; a carrier operating plan; a bill from Dr. Kang I. Koh dated January 24, 1997; appellant's listing of her unpaid compensation bills; a January 31, 1997 letter from Dr. Koh; listing of diagnostic codes; copies of prescriptions for magnetic resonance imaging (MRI), test medical, bilateral orthotics and knee braces; x-rays of both her hips, left knee, left ankle and left foot; a February 11, 1994 work restriction form; information regarding foot products and foot conditions; a July 23, 1997 letter from Dr. D.L. Fortson;² a Form CA-17 dated September 23, 1993; March 2, 1987 memorandum regarding medical certification; a February 11, 1994 report by Dr. Larry R. Brazley;³ appellant's report of undelivered mail dated January 29, 1994; and medical literature regarding leg cramps and cortisone; a December 13, 1996 health benefits registration form with annotations.

By letter dated September 5, 1997, the employing establishment stated that appellant had not submitted any medical documentation for an occupational injury to the employing establishment, that Forms CA-1 and CA-2a were forwarded to OWCP for processing and that a Form CA-2 was sent to appellant at her request. The employing establishment also indicated that they had no knowledge of managerial improprieties alleged by appellant.

In a decision dated September 5, 1997, the Office denied appellant's claim on the grounds that it was not filed timely. In the attached memorandum, the Office found that appellant was able to obtain claim forms, her paperwork had been forwarded to the Office in a timely manner and she was aware of the proper procedure to file her claim.

In a letter dated September 23, 1997, appellant stated that she had received the Office's decision on September 27, 1997 and that she disagreed with the Office's September 5, 1997 decision. Next, she stated that she wanted 3 years of back pay as well as 288 weeks of pay for her knee and 205 weeks of pay for her foot.

Appellant, in a letter dated October 24, 1997, requested reconsideration of the Office's September 5, 1997 decision, as well as approval for an MRI test, payment of past medical bills and reinstatement of her medical insurance. Additional information submitted include appellant's activity sheet, a Form CA-7 requesting compensation for the period April 1994 through October 27, 1997, an October 20, 1997 Form CA-20 completed by a podiatrist; a three

² Board-certified in family practice medicine.

³ Board-certified in internal medicine and rheumatology.

page narrative dated September 23, 1997, from appellant; a copy of a photo of a foot on a pillow, a business card for St. Catherine Hospital Foot and Ankle Center; an activity sheet of the employing establishment's time and attendance records dated October 16, 1996 for an unknown year; and a postcard from the Office acknowledging receipt of her claim.

By decision dated November 12, 1997, the Office found appellant's request for reconsideration insufficient to warrant merit review of its prior decision.⁴

The Board finds that appellant's claim was not timely filed.

Section 8122 of the Act⁵ provides that an "original claim for compensation for disability or death must be filed within three years after the injury or death." Subsection (b) of this section states that in latent disability cases, the time limitation does not begin to run until the employee is aware or by the exercise of reasonable diligence should have been aware, of the disability and its causal relationship to her employment.⁶

On her claim form, appellant indicated she first realized her carpal tunnel syndrome, fallen arches, spurs and torn meniscus in her knee was caused or aggravated by her employment on February 11, 1994. Appellant was terminated from the employing establishment effective March 14, 1994 and thus ceased to be exposed to the implicated conditions at least by that date. Since appellant did not file her claim for a carpal tunnel syndrome, fallen arches, spurs and a torn meniscus until May 25, 1997, she is clearly outside the three-year time limitation period and her claim is, therefore, untimely.

Although not filed within the three-year limitation provision, appellant's claim would be regarded as timely if appellant's "immediate superior had actual knowledge of the injury or death within 30 days."⁷ The knowledge must be such as to put the immediate superior "reasonably on notice of an on-the-job injury or death."⁸ Mere knowledge that the employee has a physical condition is not sufficient to satisfy the requirements of the statute; it must also be shown that there were other circumstances, which put the supervisor on notice that the condition was related to employment or that the employee attributed the condition to her employment.⁹ However, there is no evidence in the record which indicates that appellant's supervisor had

⁴ On November 28, 1997 appellant requested a hearing before an Office hearings representative. The Office denied appellant's request for a hearing in a December 18, 1997 decision on the grounds that she had previously requested reconsideration and was not entitled to a hearing as a matter of right. As appellant had filed her appeal with the Board on December 9, 1997 the Office did not have jurisdiction to issue the December 18, 1997 decision and that decision is null and void. *Douglas E. Billings*, 41 ECAB 880 (1990).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ 5 U.S.C. § 8122(b).

⁷ 5 U.S.C. § 8122(a)(1).

⁸ *Id.*

⁹ *Kathryn A. Bernal*, 37 ECAB 672 (1986).

actual knowledge of the injury within 30 days or that written notice of the injury was given within 30 days.

The Board further finds that the Office properly denied appellant's request for reconsideration under section 8128(a).

Under the Office's federal regulations at 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office and by (i) showing that the Office erroneously applied or interpreted a point of law, (ii) by advancing a point of law or fact not previously considered by the Office, or (iii) by submitting relevant and pertinent evidence not previously considered by the Office.¹⁰ Section 10.138(b)(2) provides that any application for review of the merits of the claim, which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.

In her October 24, 1997 letter to the Office, appellant did not submit any new or relevant evidence or argument demonstrating that the Office erred in the denial of her claim for compensation. Appellant, in a letter dated October 24, 1997, requested reconsideration of the Office's September 5, 1997 decision, as well as approval for an MRI test, payment of past medical bills and reinstatement of her medical insurance. She submitted an activity sheet, a Form CA-7 requesting compensation for the period April 1994 through October 27, 1997, an October 20, 1997 Form CA-20 completed by a podiatrist, a three-page narrative dated September 23, 1997, from appellant a copy of a photograph of a foot on a pillow, a business card for St. Catherine Hospital Foot and Ankle Center, an activity sheet of the employing establishment's time and attendance records dated October 16, 1996 for an unknown year and a postcard from the Office acknowledging receipt of her claim. This evidence is irrelevant to whether appellant timely filed her claim. Appellant made no argument regarding error in the Office's decision and, thus, has failed to raise a relevant or pertinent point of fact not previously considered by the Office. The Office properly declined to reopen the case for merit review.

¹⁰ *Norman W. Hanson*, 45 ECAB 430 (1994).

The decisions of the Office of Workers' Compensation Programs dated November 12 and September 5, 1997 are affirmed.

Dated, Washington, D.C.
November 29, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member