

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYRTIS M. JORDAN and FEDERAL DEPOSIT INSURANCE CORPORATION, RESOLUTION TRUST CORPORATION, Baton Rouge, LA

*Docket No. 99-1766; Submitted on the Record;
Issued August 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant filed a timely claim for compensation.

On June 23, 1998 appellant, a former asset technician, filed a claim asserting that she sustained an injury on May 29, 1992 while in the performance of her duties. She explained: "About January, 1992, I felt like someone in my department wanted me gone. I could not sleep, hyper, very tired. I secured a transfer to another department. I thought men at my apartment were connected to the person that I thought wanted me gone. After the men took me to the hospital, I thought they told lies and caused the hospital to keep me. I did not like that place." Appellant added that May 29, 1992 was the date of her first hospitalization. Appellant was terminated from her position on October 22, 1992.

In a decision dated September 24, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that her claim did not meet the guidelines for timeliness.

On March 1, 1999 the Office notified appellant of circumstances that would warrant a waiver of the three-year limitation on filing claims. The Office provided appellant 30 days to submit relevant evidence. The Office also allowed the employing establishment an opportunity to address the issue.

The Office received a March 18, 1999 letter from George D. Runnels, an attorney, who argued that appellant was hospitalized without being able to communicate with anyone from about May 29 to June 14, 1992. Her family removed her from a hospital in Baton Rouge, Louisiana and had her committed to a mental facility in Mississippi. The attorney asserted that appellant had mental problems since that time and did not have the capacity to file her claim within the three-year limitation period. He requested that the limitation period be waived.

In a decision dated April 1, 1999, the Office denied modification of the September 24, 1998 decision. The Office found that appellant had not authorized Mr. Runnels to represent her,

that there was no evidence appellant's employer had actual knowledge of her claimed emotional stress injury of May 1992 and that there was no evidence establishing that appellant was incompetent to file a claim within the three-year limitation period.

The Board finds that appellant's June 23, 1998 claim for compensation is untimely.

A claimant seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴

Section 8122(a) 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. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

- "(1) The immediate superior had actual knowledge of the injury or death 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; or
- (2) Written notice of injury or death as specified in section 8119 ... was given within 30 days."⁶

Section 8122(b) provides that, in a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to her employment. In such a case, the time for giving notice of injury begins to run when the employee is aware or by the exercise of reasonable diligence should have

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Kenneth W. Grant*, 39 ECAB 208 (1987); *James E. Lynch*, 32 ECAB 216 (1980); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357 (1951); see 5 U.S.C. § 8101(1).

⁴ *Paul S. Devlin*, 39 ECAB 715 (1988); *Emmet L. Pickens*, 33 ECAB 1807 (1982); *Kathryn A. O'Donnell*, 7 ECAB 227 (1954).

⁵ 5 U.S.C. § 8122(a).

⁶ Section 8119 provides that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.

been aware, that her condition is causally related to her employment, whether or not there is a compensable disability.⁷

The time limitations in section 8122(a) and (b) do not: (1) begin to run against a minor until she reaches 21 years of age or has had a legal representative appointed; (2) run against an incompetent individual while she is incompetent and has no duly appointed legal representative; or (3) run against any individual whose failure to comply is excused by the Secretary on the ground that such notice could not be given because of exceptional circumstances.⁸

When asked to describe the development of the claimed condition, appellant stated that she first noticed the condition about January 1992. She stated that she felt sick but kept working. Appellant stated that the stress of her job duties made her emotional condition worse. She also stated that she became disabled in 1992 and informed the employing establishment of her condition. This evidence establishes that appellant was aware or by the exercise of reasonable diligence should have been aware, that her condition was causally related to her employment sometime in 1992. She was last exposed to factors of her employment on October 22, 1992, when she was terminated from her position. Based on this evidence, the three-year limitation for filing a claim expired no later than October 22, 1995. There is no evidence of record to establish that appellant's immediate superior had actual knowledge of the injury or death within 30 days such as to put the immediate superior reasonably on notice of an on-the-job injury or death. Nor is there evidence that a written notice of injury was given within 30 days. Further, the record contains no probative evidence to establish that appellant was incompetent for such a period of time as to render her June 23, 1998 claim timely.

As the evidence in this case fails to support that appellant filed a timely claim for compensation, the Board finds that she has not met her burden of proof to establish the essential elements of her claim.

⁷ 5 U.S.C. § 8122(b).

⁸ *Id.* at § 8122(d).

The April 1, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
August 24, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member