

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ELIZABETH A. GRIFFITHS and DEPARTMENT OF THE ARMY,  
MATERIEL COMMAND, Rock Island, IL

*Docket No. 99-1521; Submitted on the Record;  
Issued July 21, 2000*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's claim on the grounds that it was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office's denial of appellant's request for an oral hearing pursuant to section 8124 of the Act constituted an abuse of discretion.

The Board has duly reviewed the case on appeal and finds that the Office properly denied appellant's claim on the grounds that it was not filed within the applicable time limitation provisions of the Act.

Appellant, a management assistant, filed a claim on January 21, 1998 alleging that in August 1991 she became aware that she developed shortness of breath, trouble sleeping and confusion. Appellant stated that she was in Saudi Arabia from November 1990 to May 1991 and that she was given inoculations and nerve pills and was exposed to chemicals and oil fires in the performance of federal duties. Appellant resigned from the employing establishment on August 14, 1994. The Office informed appellant of the time limitation provision of the Act and requested additional factual information from appellant on April 27, 1998. By decision dated July 7, 1998, the Office denied appellant's claim as untimely finding that she was last exposed on May 20, 1991 and that there was no evidence that her supervisor had actual knowledge of her condition. Appellant, through her representative, requested an oral hearing on January 13, 1999. By decision dated February 22, 1999, the Branch of Hearings and Review denied appellant's request as untimely.

In cases of injury on or after September 7, 1974, section 8122(a) of the Act<sup>1</sup> provides that claim for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that the time for filing in latent disability cases, as in this case, does not begin

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<sup>1</sup> 5 U.S.C. § 8122(a).

to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between her employment and the compensable disability.<sup>2</sup> The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.<sup>3</sup> The statute provides an exception that a claim may be regarded as timely if an immediate superior had actual knowledge of the injury within 30 days such that the immediate superior was put reasonably on notice of an on-the-job injury or death.<sup>4</sup>

In the instant case, appellant stated that she was aware of her condition and its relation to factors of her federal employment in August 1991. Appellant asserted that the employing establishment had actual knowledge of her condition prior to the date of filing of her claim as she sought assistance in addressing her condition and was denied. This statement, without any specifics of when and to whom appellant spoke, is not sufficient to establish that the employing establishment had notice through appellant's superior within 30 days of the date of last exposure of an on-the-job injury. Moreover, appellant indicated that she was first aware of her condition in August 1991. Pursuant to section 8122(b) of the Act, appellant's claim which was filed on January 21, 1998 is not timely filed within three years after the indicated date of injury or within three years of the date of last exposure, August 15, 1994, when appellant retired. Therefore, the Office properly denied appellant's claim on the grounds that it was not timely filed within three years of when appellant should have been reasonably aware of the relationship between her employment and her claimed condition, as appellant has stated that she was aware of this relationship in August 1991.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b) of the Act,<sup>5</sup> concerning a claimant's entitlement to a hearing before an Office representative, states: "Before review under section 8128(a) of this title, a claimant ... not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>6</sup>

The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if

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<sup>2</sup> 5 U.S.C. § 8122(b); *see* 20 C.F.R. § 10.105(c).

<sup>3</sup> *Delmont L. Thompson*, 51 ECAB \_\_\_\_ (Docket No. 97-988, issued November 1, 1999).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

the request is filed within the requisite 30 days.<sup>7</sup> Even where the hearing request is not timely filed, the Office may within its discretion, grant a hearing, and must exercise this discretion.<sup>8</sup>

In the instant case, the Office properly determined appellant's January 13, 1999 request for a hearing was not timely filed as it was made more than 30 days after the issuance of the Office's July 7, 1998 decision. The Office, therefore, properly denied appellant's hearing as a matter of right.

The Office then proceeded to exercise its discretion, in accordance with Board precedent, to determine whether to grant a hearing in this case. The Office determined that a hearing was not necessary as the issue in the case could be resolved through the submission of additional evidence in the reconsideration process. Therefore, the Office properly denied appellant's request for a hearing as untimely and properly exercised its discretion in determining to deny appellant's request for a hearing as he had other review options available.

The February 22, 1999 and July 7, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.  
July 21, 2000

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993).

<sup>8</sup> *Id.*