

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL E. GRAY and DEPARTMENT OF THE NAVY,
NAVAL AIR SYSTEMS COMMAND, Pensacola, FL

*Docket No. 98-1104; Submitted on the Record;
Issued June 2, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied compensation on the grounds that appellant's claim was not timely filed.

The Board has given careful consideration to the issue involved, the contentions of appellant on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office dated and made final on September 12, 1997 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

Subsequent to the hearing representative's September 12, 1997 decision, appellant requested reconsideration in a September 30, 1997 letter. Enclosed with the reconsideration request was a September 25, 1997 statement from R.A. Collins who related that, due to a reduction-in-force, he was assigned to appellant's branch (Section 42300) as a supervisor in October 1991. Mr. Collins stated, "Shortly after my assignment to Section 42300 I had a talk with [appellant] in reference to his physical limitations: *i.e.*, walking, standing, lifting, traveling. At this time, [appellant] informed me that he had Bell's palsy and that he felt his condition was caused by job-induced stress over the pass several months." Mr. Collins noted that he could not recall the details or dates of the conversation as it was six years prior and he has been retired for over two years.

By decision dated January 30, 1998, the Office, after performing a merit review, denied modification of its previous decision.

¹ The record reflects that appellant filed a separate claim for a back injury under file number 060477161. In a decision dated July 14, 1997, the Office determined that appellant did not suffer any loss of wages due to his work injury as his actual wages meet or exceed the wages of his on-the-job injury.

The Board finds that the Office properly denied compensation on the grounds that appellant's claim was not timely filed.

Section 8122(a) of the Federal Employees' Compensation Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."² Section 8122(b) provides that in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment and the compensable disability.³ When an employee becomes aware, or reasonable should have been aware that he has a condition which has been adversely affected by factors of his federal employment, such awareness is competent to start the limitations period even though he does not know the precise nature of the impairment or whether the ultimate result of such adverse affect would be temporary or permanent.⁴ The statute provides an exception, which states that a claim may be regarded as timely if an immediate superior had actual knowledge of the 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.⁵

In the instant case, appellant's claim was not filed within three years of January 14, 1991, the date appellant stated he became aware of his Bell's palsy condition and related his condition to his federal employment. Although appellant has, at different times, alleged either that he informed his supervisor of his injury or that the supervisor witnessed the symptoms stemming from the Bell's palsy condition, there is no documentation in the record to support appellant's allegation that the employing establishment was reasonably aware that appellant felt there was a causal connection of his Bell's palsy condition to factors of his federal employment. Although the September 25, 1997 statement from Mr. Collins lends support to appellant's contention that his supervisor was reasonably on notice of an on-the-job injury, it is insufficient, standing on its own, to establish that Mr. Collins had actual knowledge that appellant believed his condition was work related. The contemporaneous medical evidence from the original claim (a back injury) which appellant attributes to the effect of management's treatment of him caused or contributed to his facial paralysis or Bell's palsy, fails to indicate that Mr. Collins was advised of a possible relationship between appellant's Bell's palsy and his employment. In a CA-2 form signed by Mr. Collins on August 19, 1994, Mr. Collins wrote, "I was first made aware of this condition in October 1991." In the subsequent narrative letter, Mr. Collins indicated that, during the past several years, appellant had complained of numbness on one side of his face and blurred vision. When these episodes occurred, appellant was granted sick leave to obtain medical treatment or remain at home for bed rest. Mr. Collins also noted that he had observed that appellant appeared to have problems with his speech and ended his narrative by stating the cause of this would have to be a medical determination. Accordingly, Mr. Collins' current statement is at odds with the contemporaneous evidence which fails to demonstrate that Mr. Collins had knowledge that

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122(b).

⁴ *Leo Ferraro*, 47 ECAB 350 (1996); *Edward Lewis Maslowski*, 42 ECAB 839, 846 (1991).

⁵ *See Jose Salaz*, 41 ECAB 743 (1990).

appellant felt his Bell's palsy condition was work related. Moreover, the record reflects that appellant was notified numerous times by the Office of the type of evidence needed to support that his claim was timely filed. The record is devoid of any evidence that appellant had discussed the possibility of his condition as being work related with Mr. Collins or any other supervisor.

The January 30, 1998 and September 12, 1997 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
June 2, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member