

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARIUS L. DOBSON, SR. and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Los Angeles, CA

*Docket No. 99-294; Submitted on the Record;
Issued June 16, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation claim on the grounds that his claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

On February 12, 1998 appellant, then a retired motor vehicle operator, filed a notice of traumatic injury and claim for compensation, Form CA-1, alleging that on May 20, 1975 he sustained an injury to his left wrist, back and cervical spine in the performance of duty. Appellant further stated that he had been assisting a forklift operator in placing equipment on the steps of a research building when the injury occurred.

On the reverse of the claim form, a personnel management specialist from the employing establishment indicated that appellant's claim was not timely filed.

By letter dated August 27, 1998, the Office requested additional evidence from appellant, both medical and factual. In this letter, the Office informed appellant that his traumatic injury claim appeared to be untimely but that he should submit evidence indicating whether his superiors had been aware of his condition and to indicate why he did not file earlier. In response, appellant explained in a September 5, 1998 letter that he did not file earlier because his superiors had not apprised him of the process and that he was too consumed with his illness to worry about filing a workers' compensation claim at that time. Appellant submitted no other evidence in support of his claim.

The Board finds that appellant's claim for a traumatic injury sustained on May 20, 1975 is barred by the applicable time limitation provisions of the Act.

In cases of injury on or after September 7, 1974, section 8122(a) of the Act¹ provides that a claim for disability or death must be filed within three years after the injury or death. Section

¹ 5 U.S.C. § 8122(a).

8122(b) provides that the time for filing in latent disability cases 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 his employment and the compensable disability.² 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.³ 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.⁴

Since appellant did not file his traumatic injury claim until February 12, 1998, more than 23 years after the date of injury, it was not timely.⁵ The Board further finds to be without merit appellant's assertion that he did not file the claim earlier because he did not know the procedures. The Board has held that an employee's assertion that he was not aware that he could file a claim is unacceptable as sufficient cause or reason for failure to file a timely claim.⁶

Appellant's claim would still be regarded as timely under section 8122(a) of the Act if his 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.⁷

In the present case, appellant has provided no evidence that his immediate superior had actual knowledge of any work-related injury within 30 days of the May 20, 1975 incident.⁸ Consequently, the Office properly found that appellant's traumatic injury claim filed on February 12, 1998 was untimely.⁹

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

³ *Edward Lewis Maslowski*, 42 ECAB 839 (1991).

⁴ *Delmont L. Thompson*, 51 ECAB ____ (Docket No. 97-988, issued November 1, 1999); *Wanda H. Rheal*, 46 ECAB 352 (1994).

⁵ *Delmont L. Thompson*, *supra* note 4.

⁶ *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993); *Anthony J. Pusateri*, 36 ECAB 283, 286 (1984).

⁷ *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁸ *Eddie L. Morgan*, 45 ECAB 600 (1994).

⁹ 5 U.S.C. §§ 8119, 8122(a)(2).

The decision of the Office of Workers' Compensation Programs dated September 30, 1998 is hereby affirmed.

Dated, Washington, D.C.
June 16, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member