U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA GHORAB and DEPARTMENT OF DEFENSE, MILITARY ENTRANCE PROCESSING STATION, Buffalo, NY

Docket No. 98-1157; Submitted on the Record;
Issued September 7, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issues are: (1) whether appellant's claim for compensation was timely filed under the three-year time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On May 16, 1997 appellant, then 46 years old, filed a claim for delusional paranoid disorder, aggravated back injury, ear ache and inability to focus, concentrate and communicate. She stated that she had been in two automobile accidents, occurring in May and October 1991. Appellant claimed that when she returned to work she was harassed and forced to work in the file room even though her employer knew she had neck and back problems. She related that she filed an Equal Employment Opportunity (EEO) complaint and alleged that the complaint caused a reprisal in the form of an effort to terminate her employment. Appellant contended that she was forced out of work due to her health problems, including her back and neck, which she stated were aggravated by her work from April 23 through May 10, 1992. She indicated that she had reached a breaking point and sought psychiatric treatment on July 10, 1992. Appellant stated that her condition became stable and she was able to think more clearly than before. She, therefore, requested a waiver of the time period in the filing of her claim. Appellant indicated that she first became aware that her condition was caused by her employment on May 4, 1997. She stated that she did not know about the Office or of the opportunity to file a claim for compensation. Appellant commented her superior and others did everything to harass her and deny her information to process her claim based on their efforts to terminate her for filing an EEO complaint.

In a May 21, 1997 response, the employing establishment indicated that appellant had filed an appeal with the Merit Systems Protection Board arising from an effort to terminate her employment on the grounds that she had falsified the information on her application for a government position. The employing establishment submitted a settlement of the appeal in which appellant agreed to resign effective August 18, 1992, citing personal reasons.

In a November 24, 1997 decision, the Office denied appellant's claim for compensation on the grounds that it was not timely filed within the three-year time limitation provisions of the Act and that there did not exist exceptional circumstances under which the time limitation could be waived.

In a January 20, 1998 letter, appellant requested reconsideration. In a February 26, 1998 decision, the Office denied appellant's request on the grounds that she had not submitted new evidence or a new legal argument in support of her claim and, therefore, her request was not sufficient to warrant review of the November 24, 1997 decision of the Board.

The Board finds that appellant's claim was not filed within the applicable three-year time limitation provisions of the Act.

Section 8122(a) of the Act[1] states that an original claim for compensation must be filed within three years after the injury for which compensation is claimed.[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] The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.[4] The remaining exceptions to the three-year limitation are that time does not begin to run against a minor until he or she reaches the age of 21, or has a legal representative appointed, that time does not run against an incompetent individual while he or she is incompetent and has no appointed legal representative and that time does not run against an individual whose failure to comply is excused by the Secretary on the grounds that timely notice could not be given because of exceptional circumstances.[5]

Appellant did not file her claim for compensation until May 17, 1997, almost five years after she last worked for the employing establishment. She stated that she was not aware of the causal relationship between her condition and her employment until May 4, 1997. However, in a May 22, 1992 report, Dr. Anslem George, a Board-certified psychiatrist, indicated that appellant complained of discrimination in her job and claimed that her supervisor was oppressing her and curtailing her rights. She indicated that she was concerned about losing her job. Dr. George noted that appellant gave her complaint in a technical, stilted and overly detailed fashion, which gave it a paranoid flavor. He diagnosed a paranoid disorder. In a June 12, 1992 report, Dr. Jerome Bierman, a Board-certified internist, stated that appellant had become very depressed over the situation at work. In a July 20, 1992 report, Rita Seibert, a licensed social worker, indicated that appellant had called, stating that she was very depressed and was very upset with

[1] 5 U.S.C. §§ 8101-8193.

[2] 5 U.S.C. § 8122(a).

[3] 5 U.S.C. § 8122(b).

[4] *See Garyleane A. Williams*, 44 ECAB 441; *Charlene B. Felton*, 36 ECAB 151 (1984).

[5] 5 U.S.C. § 8122(d).

the situation with her previous employer. Ms. Seibert related that appellant commented a coworker has told her that he had been ordered to terminate her employment in 1989. In an October 13, 1992 note, a physician with an illegible signature related that appellant expressed suicidal tendencies and complained that she had been blackballed and railroaded out of her job. These reports indicated that appellant was aware or reasonably should have been aware by October 13, 1992 that her emotional condition was causally related to factors of her employment. The time for filing a claim, therefore, would begin to run on October 13, 1992. As she did not file her claim until approximately four and a half years later, her claim was not timely filed.

Where a claim is not filed within the three-year time limitation period, it may still be regarded as timely filed under section 8122(a)(1) of the Act if the claimant's immediate supervisor had actual knowledge of the injury within 30 days of the injury. The knowledge must be such as to put the immediate supervisor on notice of an on-the-job injury or death.[6] Appellant has not submitted any evidence to show that her supervisor was aware, within 30 days of October 13, 1992, that she had an emotional condition, which she related to factors of her employment.

Appellant contended that she was unable to file a claim in a timely fashion because of her emotional condition. However, appellant's failure to file within the time limitation period could not be excused on the grounds of incompetence. Although appellant presented evidence that she had psychological problems, there was no evidence that these problems incapacitated appellant from filing a claim within the time limitation of the Act.[7]

Appellant, in a May 8, 1997 letter, claimed that she was not aware that she could file a claim for compensation until her disability retirement was approved. The Board has held, however, that ignorance of the law, or of one's rights and obligations under it, does not constitute an exceptional circumstance for which appellant can seek waiver of the requirement to timely file under the three-year time limitation.[8]

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

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that, when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits

[6] *Monroe Fears*, 43 ECAB 608 (1992).

[7] *Hugh Massengil*, 43 ECAB 475 (1992).

[8] *George Dickerson*, 34 ECAB 135 (1982).

of the claim.[9] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[10] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[11] In this case, appellant requested reconsideration but did not present any evidence or argument in support of her request. The Office, therefore, properly denied her request for reconsideration.

The decisions of the Office of Workers' Compensation Programs, dated February 26, 1998 and November 24, 1997, are hereby affirmed.

Dated, Washington, D.C.
September 7, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[9] 20 C.F.R. § 10.138(b)(2).

[10] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[11] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).