U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CRAIG L. MILLER and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, OH

Docket No. 99-2077; Oral Argument Held September 20, 2001;
Issued October 19, 2001

Appearances: *Craig L. Miller, pro se*; *Jim C. Gordon, Jr., Esq.*, for the Director, Office of Workers' Compensation Programs.

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant's claim for an emotional condition is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office properly denied appellant's request for reconsideration to 5 U.S.C. § 8128(a).

On June 19, 1997 appellant, then a 38-year old teacher, filed an occupational disease claim, alleging that on November 1, 1984 he became aware that his stress resulted from working the night shift at the employing establishment. In a note dated November 1, 1984, appellant's treating physician, Dr. Letitia van Benten, a clinical psychologist, stated that she was treating appellant for stress and emotional problems and that appellant was not able to work the night shift or more than eight hours a day five days a week. In a report dated March 6, 1986, Dr. Benten reiterated that she was treating appellant because of emotional and stress related problems. She stated that appellant could not cope with the work situation and diagnosed generalized anxiety disorder.

By letter dated June 27, 1997, the employing establishment stated that appellant's supervisor had "no recollection" of conversations with appellant concerning his inability to work nights. By letter dated July 22, 1997, the Office informed appellant that additional information was necessary to establish his claim, including his reason for delaying until 1997 to file his claim when he realized it was work related in 1984.

Appellant submitted an "[a]uthorization for [r]lease of [i]nformation," dated December 11, 1985, authorizing the release of his medical records to the Office. He submitted a routing slip dated December 13, 1984, in which he requested that he be moved off his tour of duty because of medical problems he was having at the time and stated that he could accept any job during the day shift. Appellant submitted a disability note from Dr. Benten dated November 15, 1984 stating that he could not return to work until November 19, 1984 due to

stress and a November 9, 1984 disability note from a doctor whose name is illegible, stating that appellant could return to work on November 16, 1984.

In one routing slip dated December 13, 1984, appellant requested a change from the night to day shift because the night work had become too mentally and physically stressful for him at the time. In another routing slip dated December 13, 1984, appellant requested a work schedule change because he was unable to function other than on day work. He also submitted May 29, 1985 routing slips from Dr. Jack L. Colglazier, who stated that appellant was unable to tolerate night work and only wanted day work. Another routing slip dated January 25, 1985 from Dr. Colglazier stated that appellant required permanent light-duty, day work, not to exceed 40 hours a week.

Appellant submitted additional medical reports and work restriction forms from Dr. Benten, Dr. Carl S. Jenkins, a family practitioner, Dr. Albert H. Belfie, an osteopath, and Dr. H. Owen Ward, a clinical psychologist, dated from November 25, 1991 through August 15, 1997.

Appellant described his work history, stating that he began having difficulties working the night shift on August 17, 1981, which worsened in 1982. He stated that he sought treatment from Dr. Benten in 1984, who explained to him that he was having problems because he could not adjust to the nocturnal situation at work. Appellant explained his initial, unsuccessful attempt to change his hours, his layoff in February 1985 and his return to work in October 1985 as a part-time letter carrier during the day. Appellant stated that he last worked for the employing establishment in February 1988 because of a December 1987 work injury (unrelated to this claim) which required surgery and that he was presently working as a teacher's aide for a municipal school. He stated that his current main source of stress was financial but he also felt a "little stressed" from raising teenage children.

By decision dated November 14, 1997, the Office denied the claim, stating that the evidence of record was insufficient to establish that his claim was timely filed.

By letter dated December 4, 1997, appellant requested an oral hearing, which was held on September 4, 1998. At the hearing, he testified that in 1984 he informed his then supervisor, Lana Beebe, that he was having a problem working the night shift and he submitted a note from Dr. Benten to her stating that working the night shift was causing his emotional condition. Appellant reiterated that he tried to change his hours to day shift, that he was laid off in February 1985, resumed working on the day shift until the 1987 injury and stopped working for the employing establishment in February 1998. He also described his medical treatment and his doctor's opinions.

By decision dated November 4, 1998, the Office hearing representative affirmed the Office's November 14, 1997 decision.

By letter dated February 8, 1999, appellant requested reconsideration of the Office's decision and submitted additional medical evidence. He submitted medical reports or disability notes dated November 1 and 15, 1984, March 6, 1986, March 17, 1992, and March 23, 1993 from Dr. Benten, a complaint of discrimination dated August 12, 1986 with a counseling report,

the December 11, 1985 "[a]uthorization for [r]elease of [i]nformation" and reports from Dr. Belfie dated March 2, 1992 and January 8, 1993. Appellant also submitted Dr. Colglazier's January 25 and May 25, 1985 disability notes, a report from Dr. Jenkins dated March 19, 1992, a report from Dr. Ward dated July 7, 1997 and his routing slips dated December 13, 1984.

By decision dated March 12, 1999, the Office denied appellant's request for reconsideration.

The Board finds that appellant's claim for an emotional condition is barred by applicable time limitation provisions of the Act.

Section 8122(a) of the Act[3] states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."[1] 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.[2] 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.[3]

In this case, appellant stated that he became aware that his condition was work-related on November 1, 1984, approximately 13 years before he filed his claim on June 19, 1997. The interval is clearly outside of the three-year time limitation under section 8122 of the Act. Appellant's continued federal employment through February 1985 on the night shift, the alleged cause of his emotional problems, however, tolled the start of the time period. As he continued to work at the employing establishment through February 1985, the three-year time limitation did not begin to run until that date. Nevertheless, appellant's June 19, 1997 claim was not filed within three years of February 1985. Although he stated that he thought he filed a claim in 1985 when he completed the December 11, 1985 "Authorization for Release of Information," that form does not constitute a claim and no other forms or documents in the record during the relevant time period from November 1984 through February 1988 constitute a claim.

Appellant's claim, however, would still be regarded as timely under section 8122 (a)(1) 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] There is no evidence indicating that appellant's supervisor had actual knowledge, sufficient to put her reasonably on notice of appellant's contention that his emotional condition was work related within 30 days of February 1988. The medical evidence appellant submitted from Dr. Colglazier and Dr. Benten showing that appellant was having emotional problems which prevented him from working the night shift do not indicate that the night shift caused his emotional condition and, therefore, do not establish that appellant's supervisor, Ms. Beebe, knew or had reason to know that appellant sustained a work-related emotional

[1] 5 U.S.C. § 8122(a).

[2] 5 U.S.C. § 8122(b).

[3] *See Larry E. Young*, 52 ECAB __ (Docket No. 00-476, Issued February 23, 2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

condition. Further, in the June 27, 1997 letter, the employing establishment stated that appellant's supervisor had no recollection of appellant telling her of his inability to work at night. His routing slip dated December 13, 1984 in which he requested a job in the day shift and stated that he was having medical problems and could not work the night shift was not sufficient to impute knowledge to his supervisor of a work-related injury.

Since appellant has not shown that he filed a claim by February 1988, within three years of his last exposure to working the night shift and has not shown that his supervisor had knowledge, either actual or imputed, within 30 days of February 1988, appellant has failed to establish that he filed a timely claim.

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

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either; (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[4] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or arguments that meets at least one of the standards described in section 10.606(b)(2).[5]

In this case, with the exception of Dr. Jenkins' March 19, 1992 report and Dr. Ward's July 7, 1997 report, the evidence appellant submitted in support of his request was previously in the record. In his March 19, 1992 report, Dr. Jenkins stated that appellant came to him on February 19, 1992 complaining of back pain and that he had seen Dr. Benten in 1985 for stress. He opined that appellant was "quite defensive" and "in a paranoid state" and could not return to a nocturnal work situation.

In his July 7, 1997 report, Dr. Ward opined that when appellant came to his office on June 18, 1997 he suffered from the effects of a prolonged stress reaction with a diagnosis of major depression, single episode, in partial remission. He found appellant's previous diagnosis of delusional disorder accurate. Dr. Ward stated that "[i]t seems that what was presumed to be a paranoid delusional process was related to the effects of stress related to his work situation" and it "seem[ed] clear that appellant suffered from chemical dependency with cannabis as the drug of choice."

Drs. Jenkins' and Ward's reports are dated after the February 1988 deadline for the filing of appellant's claim and, therefore, do not establish that appellant filed a timely claim or that appellant's supervisor had timely knowledge that appellant had a work-related injury. They also do not state that his emotional condition resulted from his working at night. Their reports do not constitute relevant and pertinent new evidence. Inasmuch as appellant did not show that the Office erroneously applied or interpreted a specific point of law and did not advance a relevant

[4] Section 10.606(b)(2)(i-iii).

[5] Section 10.608(a).

legal argument or submit relevant and pertinent new evidence not previously considered by the Office, appellant has failed to establish his claim.

The decisions of the Office of Workers' Compensation Programs dated March 12, 1999 and November 4, 1998 are hereby affirmed.

Dated, Washington, DC
October 19, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member