

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY M. GRAWN and DEPARTMENT OF DEFENSE,
DEFENSE FINANCING & ACCOUNTING SERVICE, Denver, CO

*Docket No. 01-2013; Submitted on the Record;
Issued April 15, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation as untimely under the Federal Employees' Compensation Act's three-year time limitation provisions.

On February 15, 2001 appellant, then a retired 65-year-old paralegal, filed a claim for chronic depression, anxiety and panic attacks, as well as chronic pain syndrome. She indicated that she first related her condition to her employment on January 15, 1998. In an accompanying statement, appellant indicated that she had been experiencing panic attacks, anxiety and depression since 1985. She first went to a private physician so as to prevent the employing establishment knowing about her condition. Eventually, however, appellant began seeing physicians associated with an army medical center. She related that in 1989 a supervisor, Leo Copeland, thought it funny to sneak up behind her and surprise her, to "... see how high he could make me jump out of my chair..." Appellant stated that she fell at work in May 1995 and was in constant pain thereafter. She indicated that she had started a new job, which had not been done before. Appellant therefore, lacked guidelines or anyone to help her as she tried to perform in the new job assignment. She eventually filed for disability retirement which was approved on September 16, 1996. Appellant commented that her supervisor was aware at that time she was receiving disability retirement for her emotional condition.

In a subsequent statement, appellant indicated that she had signed a consent form to allow her treating physician, Dr. Lawrence E. Adler, a Board-certified psychiatrist, to call her supervisor, John P. Montgomery and discuss her condition and its relation to job stress. She indicated that the conversation occurred on August 16, 1995. Appellant stated that after Dr. Adler talked with her supervisor, the supervisor did not speak to her thereafter. She noted that her disability retirement was dated September 27, 1996. Appellant stated that she had been

on leave without pay for five to six months prior to her retirement. She commented that her condition changed after her fall at work in May 1995, which caused considerable back pain.¹

Appellant submitted medical reports in support of her claim. In an August 20, 1995 form report, Dr. Adler diagnosed major depression and related her condition to prior back injury and exacerbation of panic and anxiety. In a November 30, 1995 report, Dr. Nikolas Golosow, a Board-certified staff psychiatrist at the Fitzsimmons Army Medical Center, indicated that appellant had been treated at the psychiatric clinic of the medical center since 1987. He diagnosed major depression and panic disorder. Dr. Golosow stated that, in the setting of increasing work stressors, appellant's anxiety and depression increased to the point that her job performance suffered. This reaction, in turn, led to a drop in self-esteem, increased worries, anxiety and depression to the point that appellant became overwhelmed and unable to function at work. In a September 12, 1996 report, Dr. Golosow stated appellant continued to have difficulty with depression and panic. He noted that appellant was on leave without pay.

In a June 15, 2001 decision, the Office denied appellant's claim for compensation on the grounds that her claim was not filed within three years of her employment injury, which the Office dated from the time of Dr. Golosow's November 30, 1995 report. The Office further found that there was no evidence that appellant's supervisor was aware within 30 days of the employment injury that she related her emotional condition to her employment.

The Board finds that appellant did not file her claim for compensation within the three-year time limitation provisions of the Act.

Section 8122(a) of the Act states that an original claim for compensation for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that, in latent disability cases, the time limitations 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. 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. Even if a claim was not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the 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.²

Dr. Golosow indicated in his November 30, 1995 report that appellant's emotional condition and disability was related to stress at work. Appellant therefore, knew or should have been aware by that time that her emotional condition was causally related to her employment. Since she continued to work after that time and her condition was a latent disability, the time

¹ The record contains a May 18, 2000 decision which denied appellant's claim for compensation for the period August 25, 1995 through May 30, 1996 and continuing. The decision noted that appellant had filed a claim for a back injury at work on May 25, 1995. The Office had denied her claim but the Board reversed the decision in an October 9, 1998 decision, found appellant had sustained a sacroiliac strain and remanded the case for further development of whether appellant had any disability arising from the employment injury; *see Shirley M. Grawn* (Docket No. 99-44, issued October 9, 1998).

² *Linda J. Reeves*, 49 ECAB 373 (1997).

limitations period began to run as of the date appellant stopped working. The record shows that appellant received disability retirement from the employing establishment by September 28, 1996. It was noted that she had been on leave without pay for approximately five months prior to her disability retirement. Appellant's last day of work, therefore, was some time in April 1996. As her claim was filed on February 15, 2001, almost five years after she stopped working, appellant's claim was not filed within three years of the date she stopped working and therefore was not timely under the Act.

Appellant's claim would be considered timely filed if she could establish that her immediate supervisor had actual knowledge that she related her emotional condition to her employment. Appellant stated that Dr. Adler had discussed her case with her supervisor, Mr. Montgomery, on August 15, 1995 and had informed him that appellant's condition was related to work. Appellant, however, did not present any direct evidence, either by a statement from Dr. Adler or Mr. Montgomery, that would indicate her supervisor was placed on notice that appellant's emotional condition was related to stress at work. Dr. Golosow related appellant's condition to her employment in his November 30, 1995 report. There is no indication in the record, however, that Mr. Montgomery had seen Dr. Golosow's report or was aware that medical evidence existed which related appellant's emotional condition to her employment. Appellant, therefore, has not submitted sufficient evidence to show that her immediate supervisor had reasonably received notice that her emotional condition was related to her employment.

The decision of the Office of Workers' Compensation Programs dated June 15, 2001 is hereby affirmed.

Dated, Washington, DC
April 15, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member