

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ARTHUR JAMES ROBINSON and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Milwaukee, WI

*Docket No. 01-809; Submitted on the Record;
Issued January 9, 2002*

DECISION and ORDER

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

The issue is whether appellant's claim for a traumatic injury is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

On April 26, 2000 appellant, then a retired federal employee, filed a claim for traumatic injury alleging that on February 14, 1989 he was injured in the performance of duty causing a low back strain, right side, a weak right leg and a bulging disc. The employing establishment noted that appellant had retired "some time ago" and was unable to provide information on the reverse side of the claim form.

By letter dated April 27, 2000, the employing establishment stated that it "was unable to confirm that management was aware of this claimed incident. We were unable to locate confirmation of injury of that date; however, the medical unit has a history on nonwork-related problems, especially cervical, subsequent to that date. He reported a lower back strain in 1992, which was handled as a First Aid case."

By letter dated May 24, 2000, the Office of Workers' Compensation Programs notified appellant that he needed to provide additional information to determine his claim. The Office asked for a medical report from his doctor including dates of examination and treatment, results of x-rays and other tests, diagnosis and course of treatment and his doctor's opinion as to how the work incident caused or aggravated the claimed condition. The Office indicated that it would keep the record open for 30 days for appellant to provide the information requested.

By letter dated June 8, 2000, appellant stated that he reported the incident to his acting supervisor, Tom Smolko, who was a witness to the incident and who made out an accident report. Appellant noted that Mr. Smolko "does not want to write a statement for fear of retaliation." He also asked for more time to submit his medical records since one of his doctors was in Africa at that time. In a letter dated June 21, 2000, appellant noted that the correct date of injury was February 21, 1989 and that Joe Burke, Jr. was his acting supervisor and a witness to the incident. Appellant noted that Mr. Burke was no longer an employee of the agency.

By decision dated July 20, 2000, the Office denied appellant's claim on the grounds that it was untimely filed.

The Board finds that the Office properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act.¹

Section 8122(a) the Act states that "[a]n 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

In this case, appellant alleged a back injury in 1989. However he was unable to present evidence that he notified his supervisor of the incident. Further, the employing establishment's records reveal that appellant sustained back injury in 1992 for which he was treated while at work. The Board finds that appellant should have been aware of the causal relationship between his back and the alleged 1989 incident at least by 1992 when he was treated for a back condition by the employing establishment.

Further, the record in this case contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. In appellant's June 8, 2000 statement, he stated that Mr. Smolko, his acting supervisor, was a witness to the incident, that he had informed him within an hour of the event and that Mr. Smolko submitted an accident report. However, Mr. Smolko was unwilling to verify these facts "for fear of retaliation by management." In his supplemental statement dated June 21, 2000, appellant amended his narrative by stating that the date of the injury was February 21, 1989 and that his acting supervisor and witness was Mr. Burke, who had since left the agency. The Board finds that there is no evidence of record indicating that appellant's immediate supervisor had actual knowledge or written notice of his injury within 30 days. Thus, appellant has failed to establish that he filed a timely claim on April 26, 2000.

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122(b).

The July 20, 2000 decision of the Office of Workers' Compensation Programs is affirmed.⁴

Dated, Washington, DC
January 9, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁴ The Board notes that this case record contains evidence which was submitted subsequent to the Office's July 20, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).