

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MITCHELL MURRAY and U.S. POSTAL SERVICE,
POST OFFICE, Savannah, GA

*Docket No. 00-2406; Oral Argument Held October 4, 2001;
Issued June 14, 2002*

Appearances: *Mitchell Murray, pro se; Thomas Giblen, Esq.*, for the Director,
Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's claim for an occupational disease is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

Appellant, a 49-year-old clerk expeditor, filed a notice of occupational disease on July 21, 1999 alleging that his condition of post-traumatic stress disorder was aggravated by factors of his federal employment. Appellant indicated that he first became aware of his condition on August 18, 1995 and first related the condition to his employment on May 15, 1999. On the reverse of the form, the employing establishment indicated that appellant was terminated from the employing establishment on November 7, 1989.

In a narrative statement, appellant noted that his post-traumatic stress disorder was the result of his military service in Viet Nam. However, he stated that he was unaware of this diagnosis until 1995. The record contains a decision regarding appellant's removal from the employing establishment detailing several disputes between appellant and his supervisors.

By decision dated November 29, 1999, the Office of Workers' Compensation Programs denied appellant's claim finding that it was not timely filed. Appellant requested an oral hearing on December 5, 1999.

Appellant testified at the oral hearing on May 17, 2000, and again asserted that he was unaware of any connection between his federal employment and his diagnosed condition until informed by his social worker in 1999. Appellant submitted medical records addressing his condition. By decision dated July 14, 2000, the hearing representative affirmed the Office's November 29, 1999 decision.

The Board finds that appellant's claim was timely filed.

Section 8122(a) of the Act¹ states that “[a]n 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 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 the present case, appellant alleged that the duties of his federal employment aggravated his preexisting emotional condition. He asserted that he was unaware of the condition until August 1995 when diagnosed through the Department of Veterans Affairs (VA) and that he was unaware of any relationship between his federal employment and his condition until May 1999.

The Office found the time limitation for filing a claim began to run in December 1988, the date that appellant was last exposed to the employment conditions which he alleged aggravated his post-traumatic stress disorder. Since appellant did not file a claim until July 21, 1999, the Office concluded appellant’s claim was not timely filed within the three-year period of limitation.

Appellant has maintained that he had no knowledge that his federal employment impacted his diagnosed condition of post-traumatic stress disorder until his VA social worker advised that his condition was exacerbated by his federal employment. The medical evidence in the record indicates that appellant first received treatment for a preliminary diagnosis of post-traumatic stress disorder in 1989. The health care provider noted that appellant was an unemployed postal worker who the employing establishment fired three times. Appellant related difficulties at work. On August 18, 1995 appellant was diagnosed with severe post-traumatic stress disorder. In a note dated November 15, 1996, the social worker stated that appellant continued to deny the influence of post-traumatic stress disorder in his work and social life. On March 31, 1999 the social worker noted the events which occurred at the employing establishment led to appellant’s incarceration for making terrorist threats. In a note dated May 14, 1999, appellant asked about filing for workers’ compensation benefits due to his post-traumatic stress disorder.

The Board finds that the evidence does not establish that appellant was aware of the causal relationship between his federal employment and an aggravation of his diagnosed post-traumatic stress disorder until 1999. Although the November 4, 1989 note mentioned his employment experiences, there is no evidence that appellant was aware of a causal relationship or that he should have been aware of the relationship at that time. A firm diagnosis of his medical condition was not made at that time and the progress reports of the VA largely address his experiences while in military service.⁴ Subsequently, he was diagnosed with post-traumatic

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

³ *Linda J. Reeves*, 48 ECAB 373, 375 (1997).

⁴ *See Edward C. Hornor*, 43 ECAB 834 (1992).

stress disorder in 1995. Therefore, the Board finds that appellant's claim was timely filed within the three-year period after March 31, 1999 during which he discussed his condition and employment experiences.

The July 14, 2000 and November 29, 1999 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
June 14, 2002

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

Michael J. Walsh, Chairman, dissenting:

I must respectfully dissent. Appellant has alleged, and the majority finds, that he was not aware of the connection between his federal employment and his condition, post-traumatic syndrome, until 1999. He was removed from his employment on November 7, 1989. Appellant alleged that he first became aware of his condition on August 18, 1995, but did not relate it to work until July 21, 1999. Appellant asserted that his supervisors continuously provoked and harassed him at his place of work. If, in fact, his allegations were supported by evidence, all of the harassment would have occurred on or before November 7, 1989. He alleges that he became aware of his condition in 1995 when he went to a Department of Veterans Affairs outpatient clinic and was diagnosed as having post-traumatic syndrome. He argued that no one told him about entitlement to workers' compensation until 1999.

At a hearing, held at his request, appellant testified that he had problems with his supervisors, that he suffered stress from harassment and was suspended on several occasions. The evidence is clear that, certainly by 1995, he knew he had a condition and he was clearly aware of incidents that he termed a "harassment" dating back before November 7, 1989, when he last worked. The statute requires diligence in pursuing a claim; it requires the statute of limitations to commence running when the employee has a compensable disability, and is aware, or by the exercise of reasonable diligence should have been aware of a causal relationship between his harassment, which he clearly had knowledge of in November 1989 and the diagnosis

of his condition (1995). Nevertheless, he did not file his claim until July 21, 1999. In my view, this claim was delinquent, and not timely filed. I would therefore affirm the Office decisions dated November 29, 1999 and July 17, 2000.⁵

Michael J. Walsh
Chairman

⁵ See *Linda Reeves*, 48 ECAB 373, 375 (1997); *Hugh Massengill*, 43 ECAB 475, 480 (1992).