

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STANFORD GORRIN and DEPARTMENT OF JUSTICE,
U.S. MARSHALS SERVICE, Los Angeles, CA

*Docket No. 01-1609; Submitted on the Record;
Issued March 5, 2002*

DECISION and ORDER

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

The issue is whether appellant's compensation claim was filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

On November 3, 2000 appellant filed a claim alleging that, during the spring of 1977, he sustained injuries to his lower back and spine while transporting federal prisoners on a Bureau of Prisons bus during a week-long trip between southern California and the state of Washington.

In a narrative dated November 3, 2000, appellant stated that as part of his duties as a U.S. Marshal, he sat in the rear of a Bureau of Prisons bus to provide security for trips transporting federal prisoners from southern California to the state of Washington. He sat on a steel seat in a protective cage over the rear wheels and could communicate with the driver and assistant at the front of the bus via telephone. The trip typically took 8 days and covered 2,000 miles. He alleged that on a spring night in 1977 the bus hit a rut or an object in the road, which caused him to be thrown upward out of the seat, hitting his head on the ceiling, causing a snapping sound and pain in his lower back, shoulders, neck, spinal area and buttocks as well as a "terrible headache." All the prisoners complained as they were all jostled, but the driver and staff laughed and offered no help. When appellant returned to his workplace, he complained to his supervisor, and filled out a CA-1 or CA-2 form, which was then forwarded to the Office of Workers' Compensation Programs in San Francisco, CA.

By letter dated February 27, 2001, the Office requested appellant to submit additional information. The Office noted that claims for compensation must be filed within three years from the date of injury unless the employing establishment has, within 30 days of the date of injury, actual knowledge that an employee suffered an injury in the performance of duty. The Office inquired about the details of appellant's injury and whether his employing establishment had actual knowledge within 30 days of the alleged incident. By letter dated the same day, the Office requested the employing establishment to submit additional information.

In a report dated March 13, 2001, the employing establishment stated that it could not confirm the claimant's allegations. It noted that none of the former staff who were contacted remembered the incident that appellant alleged occurred in the spring of 1977.

In a report dated March 14, 2001, appellant stated that he had retired on May 31, 1994, that there were no witnesses to the event, that he had made written and verbal statements of the event to his supervisor, John Freeman, who was now retired but whose address he supplied. Appellant stated that he had not spoken to Mr. Freeman since 1977, that there were daily log records in the federal building in Los Angeles, in the U.S. Marshal's Office, Arlington, VA, and in the Bureau of Prisons Office in Terminal Island. He described the pain to his head, neck and shoulders, noting that it had never gone away, and that he experienced pain from his right leg to foot. Appellant noted that he had no arthritis or disc disease, and listed other employment incidents including a back injury in 1978 and a vehicular accident in Reno, Nevada, in 1979. He stated that he had no treating physician and would agree to a magnetic resonance imaging (MRI) scan at anytime.

By decision dated April 24, 2001, the Office denied compensation on the grounds that appellant had not filed his claim in a timely manner as required by the Act.¹ The Office noted that claims filed in accordance with the Act must be filed within three years of the date of injury, or date of awareness of a relationship between employment and the injury, unless the immediate supervisor had actual knowledge of the injury within 30 days. The Office noted that the alleged incident occurred in the spring of 1977 and that appellant filed his claim in November 2000, more than three years following the incident, and that he was aware of a relationship between his low back pain and his employment in the spring of 1977. The Office found that the evidence did not support a finding that the immediate supervisor had actual knowledge of the injury within 30 days of the incident.

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

Section 8122(a) of the Act² 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)³ 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. 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 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.

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 (1993); *Charles B. Fenton*, 36 ECAB 151 (1984).

In this case, the time limitation for filing a claim began to run in 1997, the date appellant was exposed to employment conditions alleged to have caused his back condition. Since appellant did not file a claim until November 3, 2000, his claim was not timely filed within the three-year period of limitation.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of his alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.⁵ An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.⁶ There is no evidence in the record, however, which indicates that appellant's immediate supervisor had actual knowledge of his injury within 30 days of the date of the injury. Appellant indicated that he gave verbal and written notice of the incident, but that no written documentation was identified. There is no evidence of record from an employing establishment supervisor establishing notice of the injury within 30 days of the alleged incident in 1977. Appellant provided the name and address of his former supervisor but did not provide any statement from this individual pertaining to the 1977 incident or any information provided by appellant following the incident. Appellant has not submitted sufficient evidence to establish that there was actual notice of a work-related injury. Consequently, the exception to the statute is not met and appellant's claim for compensation is untimely filed.

The April 24, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
March 5, 2002

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Delmont L. Thompson*, 51 ECAB ____ (Docket No. 97-988, issued November 1, 1999).

⁶ *Leo Ferraro*, 47 ECAB 350 (1996).