

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT L. MILLER and DEPARTMENT OF THE ARMY,  
CORPS OF ENGINEERS, Vicksburg, MS

*Docket No. 02-1161; Submitted on the Record;  
Issued November 27, 2002*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant's October 17, 2001 claim is barred by the applicable time limitation provision of the Federal Employees' Compensation Act.

Appellant filed a claim on October 17, 2001, alleging that he suffered a harrowing ordeal while he was a member of a Flood Fight Team in November 1993 and sustained a stroke as a result of that experience.<sup>1</sup> He indicated that he first realized his disease or illness was caused or aggravated by his employment on July 9, 1994. The reverse of the claim form indicated that appellant was unable to perform the duties required of his position as of September 2001 and that he was removed from employment effective November 17, 2001. In a decision dated January 15, 2002, the Office denied the claim on the grounds that it was untimely filed.

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

Section 8122(a) of the Act provides that "An original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>2</sup> 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 his employment and the compensable disability.<sup>3</sup> The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.<sup>4</sup> If an employee continues to be exposed to injurious

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<sup>1</sup> Appellant stated that he sunk in a bog to chest level and that it took approximately 45 minutes to extricate himself, following which he was lost for another two hours.

<sup>2</sup> 5 U.S.C. § 8122(a); *see also* *George M. Dickerson*, 34 ECAB 135 (1982).

<sup>3</sup> 5 U.S.C. § 8122(b).

<sup>4</sup> *Edward Lewis Maslowski*, 42 ECAB 839, 846 (1991).

working conditions after such awareness, the time limitation begins to run on the last date of this exposure.<sup>5</sup>

The evidence establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between his becoming trapped in a bog near St. Louis on November 29, 1993 and his claimed stroke prior to October 17, 2001, when he filed his compensation claim. Appellant's statements in his October 17, 2001 compensation claim form establish this awareness. After providing a detailed description of his experience of being caught in a bog while walking the levees and doing damage survey reports in the St. Louis district on November 29, 1993, appellant related "[t]hat night I felt a strange tingling in my right arm as if it was asleep." He stated that, although he did not realize what had happened to him at that time, he was diagnosed with having a stroke in July 1994. Appellant further stated that his health had gradually deteriorated from 1993 to the present. His statements and the claim form clearly indicate that appellant was aware by July 9, 1994 of a relationship between his stroke and his employment.

The Board finds that appellant should have reasonably been aware that his stroke was caused or aggravated by his employment by July 9, 1994, when he was first diagnosed with having had a stroke. Since appellant did not file his claim until October 17, 2001, his claim is clearly outside the three-year limitation and is, therefore, untimely.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the 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. An employee must not only show 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.<sup>6</sup>

There is no evidence of record that appellant's immediate superior had actual knowledge of a relationship between appellant's stroke and factors of his employment within 30 days of the date of injury. In a November 28, 2001 statement, Vernon L. Patton stated that appellant "informed me of having a medical problem in late 1993, prior to Christmas as I recall. I may have been given several symptoms, however, I only recall one, 'headaches.' In the fall of 1994, appellant informed me that his physician had diagnosed this problem to be a light stroke. I did not consider this to be a job-related-injury." While Mr. Patton might have been aware of some of appellant's symptoms in late 1993, which would comport to the 30-day period, there is no indication that he knew about the events of November 29, 1993 or thought that appellant's symptoms were reasonably related to the events of November 29, 1993, which would have put him on reasonable notice that an on-the-job injury had occurred. Moreover, Mr. Patton specifically stated that he did not consider complaints of "headaches" to be job related.

Consequently, appellant's claim was not timely filed pursuant to 5 U.S.C. § 8122.

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<sup>5</sup> *Garyleane A. Williams*, 44 ECAB 441, 449 (1993); *William D. Goldsberry*, 32 ECAB 536, 540 (1981).

<sup>6</sup> 5 U.S.C. § 8122(a)(1); *see also Wanda H. Rheal*, 46 ECAB 352, 355 (1994); *Jose Salaz*, 41 ECAB 743, 746 (1990).

The decision of the Office of Workers' Compensation Programs dated January 15, 2002 is affirmed.

Dated, Washington, DC  
November 27, 2002

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member