

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL A. SHIELDS and DEPARTMENT OF THE NAVY,
AVIATION SUPPLY OFFICE, Philadelphia, PA

*Docket No. 03-228; Submitted on the Record;
Issued April 25, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs 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 Federal Employees' Compensation Act.

On August 8, 2001 appellant, then a 65-year-old former safety manager, filed a claim for severe anxiety and depression which he attributed to his work from 1981 to 1983 with the employing establishment.¹ He indicated on the claim form that he became aware of his condition on November 5, 1981 and attributed it to factors of his federal employment on April 13, 1982. Appellant stated:

“Starting in 1981, there had been increasing job pressure. I started to have symptoms such as psychosomatic pains in the arms and shoulders, colitis and repeated episodes of pharyngitis. In retrospect, these reflected the increasing job stress. The stress-induced illness culminated in January 1983 when I could no longer function on the job. The stress induced symptoms ceased while I was on extended sick leave.”

Appellant further stated:

“While I recognized the symptoms as work related, the condition had not become disabling and I did not understand how serious the effect of stress could be. A CA-2 [notice of occupational disease and claim for compensation] was mailed to the [employing establishment's] personnel office in April 1983.”

¹ Appellant no longer works for the employing establishment.

In a statement accompanying his claim, appellant attributed his emotional condition to increased work and pressure from 1981 to 1983 during his work with the employing establishment.

In a letter dated August 30, 2001, the Office requested additional information regarding appellant's claim from the employing establishment. In another letter of the same date, the Office requested additional factual and medical information from appellant.

By decision dated February 4, 2002, the Office denied appellant's claim on the grounds that he did not establish an injury in the performance of duty.

In a letter dated February 27, 2002, an official with the employing establishment informed the Office that it had no record of any claim filed by appellant with the Office or of any Equal Employment Opportunity complaint. The official further indicated that she had found no record of appellant "having a nine[-]month absence due to work[-]related issues in 1983."

The record contains a January 20, 1983 referral signed by appellant's supervisor approving his visit to the employing establishment's medical clinic for "abdominal pain." The supervisor indicated on the form that the problem was not occupational. The record further contains an application for sick leave from January 20 to September 9, 1983 approved by appellant's supervisor and an outstanding performance appraisal received by appellant on April 24, 1981.

By letter dated January 27, 2002, appellant requested reconsideration of his claim.

In a July 23, 2002 letter, the Office informed appellant that it was unclear whether his claim for compensation was timely filed. The Office requested that he submit a copy of his April 1985 claim as well as any records to show that his supervisor had knowledge of his claim within 30 days.

On August 2, 2002 appellant submitted the front page of a Form CA-2 dated April 6, 1983.

In an August 21, 2002 response, the Office requested that appellant submit the reverse side of the claim form. The Office noted that the claim form "has an attached page with instructions and at the bottom of which is a receipt designed to be signed by [the employing establishment] personnel, which you keep, acknowledging the filing of the claim." The Office advised appellant to review his personnel file with his current federal employer to see if it contained a copy of his claim and also see if his medical file contained reports sent by his physician to his former employing establishment. The Office indicated that it was sending a copy of the letter to appellant's prior employing establishment.

By letter dated August 26, 2002, an official with appellant's prior employing establishment informed the Office that she had no record of appellant claiming a 1983 injury.

By decision dated September 26, 2002, the Office vacated its February 4, 2002 decision denying appellant's claim on the grounds that he had not established an injury in the

performance of duty. The Office then denied the claim on the grounds that it was not timely filed pursuant to 5 U.S.C. § 8122.

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.

Section 8122(a) of the Act states: "An 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 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

In this case, appellant indicated on his August 2, 2001 occupational disease claim form that he became aware of the relationship between his emotional condition and his employment on April 13, 1982. The record indicates that appellant continued to work until January 20, 1983. The three-year time limitation began to run on January 20, 1983 as this was the date that appellant was last exposed to the employment conditions which he alleged caused his emotional condition. Therefore, appellant's August 8, 2001 claim was filed beyond the three-year time limitation period.

Although not filed within the three-year time limitation period, appellant's claim would be regarded as timely under section 8122 if his "immediate supervisor had actual knowledge of the injury or death within 30 days."⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁶ Additionally, the claim would be regarded as timely if written notice of injury or death was provided within 30 days.⁷ In this case, however, the record contains no evidence that appellant's supervisor had actual knowledge of the injury within 30 days or that written notice of the injury was given within 30 days. The employing establishment informed the Office that it had no record of any claim filed by appellant for a work-related injury in 1983. The record shows that appellant's supervisor approved his visit to the employing establishment's medical facility on January 20, 1983 for abdominal pain; however, the supervisor indicated on the form that the condition was not work related. The supervisor further approved appellant's application for sick leave from January 20 to September 9, 1983; however, there is no indication on the leave form that it was for an employment-related condition. Appellant has not submitted any evidence that his supervisor

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122(b).

⁴ *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁵ 5 U.S.C. § 8122(a)(1).

⁶ *Id.*

⁷ *Id.*

received medical reports from a physician within 30 days of January 20, 1983 which would put him on notice that appellant was claiming an employment-related condition.

Appellant contended that he sent a prior claim for the injury to the employing establishment's personnel office in April 1983. In support of his assertion, appellant submitted a copy of the front page of a CA-2 dated April 6, 1983. On appeal, appellant argued that the fact that the top of the CA-2 claim form contained the phrase "reproduced at government expense" established that the copy was printed from his file using a government copier. However, this is not sufficient to establish that the employing establishment received appellant's claim in 1983. The Office requested that appellant submit the reverse side or second page of the claim form which is to be completed and signed by the claimant's supervisor. The Office also requested that appellant submit a receipt signed by the employing establishment's personnel office as evidence that it had received his claim. Appellant, however, did not respond to the Office's request for this information. An official with the employing establishment maintained that it had no record of appellant filing a claim in 1983. Therefore, appellant has not established that he filed a prior claim for compensation in 1983.

For these reasons, the Office properly denied appellant's claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act.

The decision of the Office of Workers' Compensation Programs dated September 26, 2002 is affirmed.

Dated, Washington, DC
April 25, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member