

**United States Department of Labor
Employees' Compensation Appeals Board**

TARIKU H. KEIRA, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Lauderdale, FL, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-838
Issued: June 23, 2006**

Appearances:
Tariku H. Keira, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 18, 2006 appellant filed a timely appeal from an Office of Workers' Compensation Programs' nonmerit decision dated February 23, 2005, denying his claim on the grounds that it was not timely filed. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant's appeal was filed on February 18, 2006, the Board has no jurisdiction to consider an August 20, 1999 merit decision, denying his claim for an emotional condition.² Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the February 23, 2005 decision.

¹ 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

² See *Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

ISSUES

The issues are: (1) whether appellant's claim for an emotional condition was timely filed pursuant to 5 U.S.C. § 8122(a); and (2) whether the Office abused its discretion in denying appellant's request to subpoena witnesses for a hearing before an Office hearing representative.

FACTUAL HISTORY

On June 9, 2003 appellant, then a 57-year-old window distribution clerk, filed an occupational disease claim (Form CA-2) alleging that he had a post-traumatic stress disorder caused by management having him arrested on June 14, 1995. He first became aware of his condition on August 19, 1998 and was first aware that his condition was causally related to his employment on June 14, 1995.

In reports dated July 2 to 30, 1998 sent to appellant's supervisor, Dr. Enrique DelCampo, an attending psychiatrist, diagnosed post-traumatic stress disorder related to his military experience in Vietnam and aspects of his job at the employing establishment. In an August 4, 1998 report sent to appellant's supervisor, Dr. Henry Leon, a psychologist, diagnosed post-traumatic stress disorder caused by an incident on June 14, 1995, when appellant was arrested and jailed for trespassing on employing establishment property. In a September 17, 1998 report sent to an employing establishment physician, Dr. Bernardo Pascual, an attending psychiatrist, described appellant's difficulties at the employing establishment beginning in 1995. He diagnosed an adjustment disorder, post-traumatic stress disorder and paranoid personality disorder.

By decision dated August 20, 1999, the Office denied appellant's claim on the grounds that he failed to establish that his emotional condition was sustained in the performance of duty. By decision dated September 4, 2003, the Office denied appellant's claim on the grounds that it was not timely filed.

On October 21, 2003 appellant submitted a copy of his CA-2 form claim, on which he had crossed out the date August 19, 1998, as the date he first became aware of his emotional condition and June 14, 1995, as the date he first realized that his emotional condition was caused or aggravated by his employment. Appellant handwrote the dates September 18, 2000 and July 13, 2003, respectively, for these sections of the claim form.

By decision dated February 17, 2004, an Office hearing representative remanded the case for further development.

By letter dated March 15, 2004, the Office noted that appellant initially indicated that he first became aware of his condition on August 19, 1998. However, he submitted another copy of his CA-2 form on October 21, 2003 and indicated that he first became aware of his condition on September 18, 2000. The Office asked appellant why he did not submit a claim within three years of either of the dates in which he indicated that he first became aware of his condition, August 19, 1998 or September 18, 2000.

On April 9, 2004 appellant responded that he did not timely file his claim because the employing establishment refused to provide him with the necessary form. An April 15, 2004 memorandum to the file indicated that the employing establishment was not aware of the claimant's allegation that he was refused a claim form.

By decision dated April 15, 2004, the Office denied appellant's claim on the grounds that it was not timely filed. By decision dated May 18, 2004, the Office denied appellant's request for reconsideration.

On June 4, 2004 appellant requested an oral hearing.

By decision dated June 24, 2004, the Office denied appellant's request for a hearing on the grounds that he had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right. The Office exercised its discretion in considering his request for a hearing and determined that the issue in the case could be equally well addressed through a request for reconsideration and the submission of additional evidence that his claim was timely filed.

By decision dated September 28, 2004, an Office hearing representative vacated the May 18 and June 24, 2004 decisions.

On October 25, 2004 appellant requested subpoenas for 13 individuals, including employing establishment supervisors and physicians and other employing establishment employees to appear at the oral hearing. He did not indicate what information he wished to obtain from the witnesses or why the information he sought could not be obtained through other means.

On November 30, 2004 a hearing was held before an Office hearing representative.

By decision dated February 23, 2005, the Office hearing representative denied appellant's claim as untimely filed. He also denied appellant's request for subpoenas on the grounds that it was not timely filed and did not comply with Office regulations.

LEGAL PRECEDENT -- ISSUE 1

In cases of injury on and after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.³ Section 8122(b) of the Act 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.⁴ The Board has

³ 5 U.S.C. § 8122(a).

⁴ 5 U.S.C. § 8122(b).

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 exposure.⁵

ANALYSIS -- ISSUE 1

Appellant indicated initially that he first became aware of his emotional condition on June 14, 1995 and the causal relationship to his employment on August 19, 1998. Appellant has also submitted medical reports to the Office from his psychologist, Dr. Leon, and from his psychiatrist, Dr. Pascual, dating from July 1998, which discuss appellant's alleged emotional condition and appellant's employment. Appellant therefore should have been aware of the condition and the relationship to his employment by August 1998, and the time limitations period began to run no later than August 19, 1998. Since appellant did not file a claim until June 9, 2003, his claim was filed outside the three-year time limitation period, which ended August 19, 2001.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior, another employing establishment official, had actual knowledge of the injury within 30 days of the date of injury, June 14, 1995. Therefore, his superior would need actual knowledge of his claimed injury by July 14, 1995, *i.e.*, within 30 days of June 14, 1995.⁶ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁷ The record shows that appellant submitted medical reports regarding his emotional condition dated July 2 to September 17, 1998. The reports from Dr. DelCampo and Dr. Leon were submitted to appellant's supervisor. Dr. Pascual's report was submitted to an employing establishment physician. However, these reports do not meet the requirement in this case that the employing establishment have actual knowledge of appellant's condition within 30 days of June 14, 1995, the date he first became aware of his condition. Appellant's claim would still be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.⁸ However, there is no indication that appellant provided written notice of injury prior to June 9, 2003, the date he filed his Form CA-2.

LEGAL PRECEDENT -- ISSUE 2

Section 8126⁹ of the Act provides that the Secretary of Labor, on any matter within her jurisdiction, may issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles. This provision gives the Office discretion to grant or reject requests for subpoenas. Office regulations state that subpoenas for documents will be issued only where the documents

⁵ *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁶ *Larry E. Young*, 52 ECAB 264 (2001). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (February 2000).

⁷ *Kathryn A. Bernal*, 38 ECAB 470 (1987).

⁸ 5 U.S.C. §§ 8122(a)(1), 8122(a)(2).

⁹ 5 U.S.C. § 8126.

are relevant and cannot be obtained by any other means. Subpoenas for witnesses will be issued only where oral testimony is the best way to ascertain the facts.¹⁰

In requesting a subpoena, a claimant must explain why the testimony is relevant to the issue in the case and show that a subpoena “is the best method or opportunity to obtain such evidence because there are no other means by which the ... testimony could have been obtained.”¹¹ The Office hearing representative retains discretion on whether to issue a subpoena.¹² The function of the Board on appeal is to determine whether there has been an abuse of discretion. Abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment or actions taken that are clearly contrary to logic and probable deductions from established facts.¹³

ANALYSIS -- ISSUE 2

On October 25, 2004 appellant requested subpoenas for 13 individuals, including employing establishment supervisors and physicians and other employing establishment employees, to appear at the oral hearing. However, he did not timely file his request for subpoenas within 60 days of the date of his original hearing request, June 4, 2004, as required by Office regulations.¹⁴ Subpoenas are issued for witnesses if the testimony sought is directly relevant to the issues involved and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the testimony could be obtained.¹⁵ Appellant did not indicate what information he wished to obtain from the witnesses and how it was material to his claim or why the information he sought could not be obtained through other means. The Board finds that the hearing representative, under the circumstances of this case, acted within his discretion in denying appellant’s request for subpoenas.

CONCLUSION

The Board finds that appellant has not filed a timely claim for compensation under the Act. The Board further finds that the Office acted properly in denying appellant’s request for subpoenas.

¹⁰ 20 C.F.R. § 10.619.

¹¹ *Id.*; see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.f (January 1999).

¹² *Id.*

¹³ *Dorothy Bernard*, 37 ECAB 124 (1985).

¹⁴ *Supra* note 10.

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 23, 2005 is affirmed.

Issued: June 23, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board