

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

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<b>GARDENIA C. HUNG, Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 06-212</b>
	)	<b>Issued: May 1, 2006</b>
<b>DEPARTMENT OF LABOR, Chicago, IL,</b>	)	
<b>Employer</b>	)	
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<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Gardenia C. Hung, pro se</i>	
<i>Office of Solicitor, for the Director</i>	

**DECISION AND ORDER**

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

**JURISDICTION**

On November 7, 2005 appellant filed a timely appeal of a decision of the Office of Workers' Compensation Programs' hearing representative dated December 3, 2004 which affirmed the Office's June 23, 2004 decision which denied her claim for compensation as untimely filed. Pursuant to 20 C.F.R §§ 501.2(c) and 501.3, the Board has jurisdiction over this issue.

**ISSUE**

The issue is whether appellant's claim for compensation was filed within the time limitations set forth in 5 U.S.C. § 8122.

**FACTUAL HISTORY**

On March 16, 2004 appellant, then a 46-year-old claims examiner, filed a traumatic injury claim alleging that on October 1, 1991 she was injected with a drug and lost consciousness which caused her to lose her child. She alleged that this occurred in the performance of her federal duties. Appellant was terminated from her employment during her probationary period

on January 14, 1992. The employing establishment controverted the claim and alleged that it was untimely filed.

In a March 22, 2004 statement, Joan M. Rosie, the employing establishment District Director, indicated that appellant had not timely filed a notice of traumatic injury. She denied that the employing establishment injected drugs into her or that appellant was abused by any employees or managers of the employing establishment. Ms. Rosie noted that appellant was terminated during her probationary period due to unsatisfactory performance and conduct and that appellant was given additional training and feedback beyond the normal claims examiner training. She further denied that coworkers “yelled at” appellant, that any investigations were carried out pertaining to her or that the ventilation system overheated on November 25, 1991 causing appellant to become unconscious. Ms. Rosie also denied that appellant was given shots of a chemical substance, that her clothing was marked with an “X” in blue ink or that her “feet or ankles were scraped by anyone in this office.” She also noted that appellant was hospitalized from approximately December 1991 to sometime in January 1992 and returned with a medical release from her psychologist.

On May 28, 2004 the Office received a copy of a letter from appellant to Jean Johnson of the Equal Employment Opportunity (EEO) Commission, which was undated, but which appears to have been faxed on September 19, 2001. She described circumstances regarding her wrongful discharge claim and referred to an incident of a chemical substance being sprayed in the work area. Appellant alleged that she became sick and subsequently hospitalized. She also alleged that, while she was unconscious she was given a shot of a chemical substance and marked upon, awakening with an “X” on her shirt.

In a letter dated June 3, 2004, the Office requested additional evidence regarding the claim.

In a June 13, 2004 statement, appellant alleged that she had filed a timely claim in 1992. She alleged that on January 19, 1992 she returned to the employing establishment and met with an individual named Herb Roth, whom she alleged, was the Office representative, to discuss her claim. Appellant alleged that he called another individual from the employing establishment, Lois Ware. She contended that both individuals refused to provide her with compensation or reinstatement. Additionally, appellant filed an EEO claim in a timely manner; however, it was deleted. She further alleged that her home was subsequently invaded and all relevant evidence pertaining to her claim was removed.

By decision dated June 23, 2004, the Office denied the claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. The Office noted that the evidence did not support a finding that appellant’s immediate supervisor had actual knowledge within 30 days of the injury.

By letter dated July 4, 2004, appellant requested an examination of the written record.

By decision dated December 3, 2004, the Office hearing representative affirmed the Office’s June 23, 2004 decision.

## LEGAL PRECEDENT

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.<sup>1</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 the employment and the compensable disability.<sup>2</sup> Even if a claim is 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 or death within 30 days or written notice of the injury as specified in section 8119 was provided within 30 days.<sup>3</sup>

## ANALYSIS

Appellant alleged that she was injected with a drug and lost consciousness which caused her to lose her child while at work in the performance of her duties on October 1, 1991. She was aware of an employment injury as of that date, but did not file the claim until March 16, 2004. There are no prior letters from appellant containing words of claim.<sup>4</sup> Although she indicates that she attempted to file a claim, appellant submitted no evidence to support her allegations. Appellant, therefore, did not file the claim within three years of the injury.

As this was a traumatic injury claim, any resulting disability should not have been latent but immediately apparent, such that the provisions of the Act pertaining to latent disability should not apply. However, *arguendo*, even if appellant asserts that she was not immediately aware of her traumatically-induced condition, she did not submit any evidence, such as reasoned medical evidence, to support that she could not have been reasonably aware of the claimed injury resulting from the claimed traumatic incident until a later date. Therefore, no claim for latent disability was timely made.

As noted above, a claim may be timely notwithstanding the failure to file within three years, if the immediate superior had actual knowledge of the injury within 30 days or written notice of injury was given 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.<sup>5</sup> Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.<sup>6</sup> In the instant case, the employing establishment denied the allegations submitted by appellant and alleged that the claim was untimely filed. While the employing establishment acknowledged that appellant received treatment for an emotional condition while

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<sup>1</sup> 5 U.S.C. § 8122(a).

<sup>2</sup> 5 U.S.C. § 8122(b).

<sup>3</sup> 5 U.S.C. § 8122(a)(1); *see also* *Larry Young*, 52 ECAB 284 (2001).

<sup>4</sup> *See Bobby J. Parker*, 49 ECAB 260 (1997).

<sup>5</sup> *Kathryn A. Bernal*, 38 ECAB 470 (1987).

<sup>6</sup> 5 U.S.C. §§ 8122(a)(1), 8122(a)(2).

she was employed, it did not indicate that it had any knowledge of an alleged employment related condition.<sup>7</sup> There is no indication that a supervisor had actual knowledge of an injury within 30 days of October 1, 1991. Appellant had not shown that her supervisor was put on notice and, in fact, the employing establishment had denied her allegations.

For these reasons, appellant's claim is not timely and is barred by the applicable time limitation provisions of the Act.

**CONCLUSION**

Appellant's claim is barred by the applicable time limitation provisions of the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 3, 2004 decision of the Office of Workers' Compensation Programs' hearing representative is affirmed.

Issued: May 1, 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

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<sup>7</sup> For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury. *David R. Morey*, 55 ECAB \_\_\_\_ (Docket No. 04-967, issued August 16, 2004).