

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

G.A., Appellant)

and)

**DEPARTMENT OF DEFENSE, DEFENSE
LOGISTIC AGENCY, FORT BELVOIR, VA,
Employer**)

**Docket No. 06-1083
Issued: November 16, 2006**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 10, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 11, 2006 denying her claim on the grounds that it was not timely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant's claim was timely filed pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On July 20, 2005 appellant, then a 50-year-old retired computer specialist, filed an occupational disease claim (Form CA-2) alleging that her emotional condition was due to racial discrimination and harassment. She first became aware of her condition in January 1988 and that it was causally related to her employment on September 5, 1990. Appellant was approved for disability retirement effective August 30, 1994.

In a July 20, 2005 statement, appellant stated that she first became aware of her condition in January 1988. She filed a complaint of discrimination regarding her nonselection for a promotion against her immediate supervisor, Kenneth Bryant, in September 1987 and subsequently complained of reprisal by management in 1988, 1989 and 1990. After nonprofessional treatment did not improve, appellant sought treatment from Dr. Tom G. Peponis, Jr., a general practitioner, and Dr. William Bronson who took her off work. She stated that Dr. Bronson told her to quit her job. Appellant later sought treatment with Dr. Joyce McCaughan, a psychiatrist, and Dr. Robert Perkins, a neurologist. She outlined 18 incidents which she alleged constituted racial discrimination. Appellant was transferred to another department despite her psychiatrist's concern and noted that she was not trained for the position. She explained her delay in filing her claim by noting that she had just opened a box she had packed prior to leaving work and the claim form was at the top of the box.

Appellant submitted a copy of a letter dated August 26, 1989 and a document entitled "summary." In an October 23, 1990 medical report, addressed to John Froehle, Director, Office of Technical Support, Dr. McCaughan stated that appellant had been under her care for depression since September 5, 1990. She found that appellant could return to part-time work on November 5, 1990 and full-time work on November 17, 1990. Dr. McCaughan opined that appellant's depression was "directly related to her employment." A June 11, 1996 medical report from Dr. McCaughan and a November 5, 1990 medical report from Dr. Peponis, listed appellant's diagnoses. These documents were received by the Office on August 22, 2005.

In a letter dated August 23, 2005, the Office advised appellant that the evidence submitted was insufficient to establish her claim and requested additional factual and medical information.

Appellant submitted copies of materials previously submitted. In a September 20, 2005 statement, she noted that she last worked in January 1993, possibly January 25, 1993 and had applied for disability retirement in August 1994. Dr. McCaughan had previously sent medical reports to Mr. Froehle, director, in October 1990. Appellant stated that, after she returned to work in November 1990, she spoke to Mr. Froehle to object to her transfer to a different department. She alleged that she told him about the nature and cause of her illness. Appellant contended that Dr. McCaughan sent letters to her immediate supervisor, Bruce Jarvis, in February 1993 and that she had talked to Mr. Jarvis in December 1992 about her illness. She also submitted a statement dated September 16, 2005.

The Office received correspondence and documentation relative to appellant's Equal Employment Opportunity (EEO) filing and materials pertaining to her job performance, both

during and after her employment with the employing establishment. Appellant received were examination notes dated December 18, 2003 to December 12, 2005 from Dr. Christopher Corner, a psychiatrist. By decision dated January 11, 2006, the Office denied her claim on the grounds that it was not timely filed.

LEGAL PRECEDENT

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.¹ A claim may be allowed notwithstanding the time limitation if the employee's immediate supervisor had actual knowledge of the injury within 30 days of its occurrence, or if written notice of the injury was given within 30 days pursuant to 5 U.S.C. § 8119.² In a case of latent disability, the time for giving notice begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that her condition is causally related to her employment, whether there is compensable disability.³

The time limitations do not begin to run against any individual whose failure to comply is excused by the Secretary on the grounds that such notice could not be given because of exceptional circumstances.⁴

ANALYSIS

In this case, appellant filed her claim for compensation on July 20, 2005. She noted that she first became aware that her emotional condition was due to her federal employment in September 1990.

In a case involving a claim for an occupational disease or illness, the time does not begin to run until the claimant is aware or reasonably should have been aware, of the causal relationship between her employment and the compensability disability.⁵ If her exposure to the implicated employment factors extends beyond the date of such awareness, the time limitation begins to run on the last date of such exposure.⁶ The record establishes that appellant's last possible exposure to employment factors was on January 25, 1993 the date she stopped work at the employing establishment. Since she did not file a claim until July 20, 2005, her claim was filed outside the three-year limitation period.

However, under section 8122(a)(1) of the Act, appellant's claim would still be regarded as timely filed if her immediate supervisor or another employing establishment official had

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(a)(1)-(2).

³ 5 U.S.C. § 8122(b).

⁴ 5 U.S.C. § 8122(d)(3).

⁵ *Charles Walker*, 55 ECAB ____ (Docket No, 03-1732, issued January 8, 2004).

⁶ *Peter S. Elliott*, 51 ECAB 627 (2000).

actual knowledge of the injury within 30 days of its occurrence.⁷ This provision removes the bar of the three-year time limitation if met.⁸ Appellant's claim would be regarded as timely if her immediate superior knew of the injury within 30 days of her last exposure to the implicated employment factors on January 25, 1993.⁹ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁰ An employee, therefore, must show that not only her immediate superior knew she was injured but also knew or reasonably should have known that it was an "on-the-job" injury.¹¹

Appellant contends that her immediate supervisor and other officials knew about her emotional condition as she had advised then and her physicians had sent letters concerning her condition. The Board has held that knowledge of an employee's illness is not sufficient to establish actual knowledge and timeliness. It must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it to her employment.¹² She submitted a copy of Dr. McCaughan's October 23, 1990 report that was addressed to an employing establishment official. However, there is no evidence to support that the employing establishment received this letter. There is no other evidence to substantiate appellant's allegations that her supervisors knew of her work-related condition. Thus, she has not established actual knowledge by her supervisors of her work-related condition within 30 days and, therefore, has not established a timely claim.¹³

Appellant's stated reason for not filing a timely claim was that she only recently discovered a claim form in a box which had been packed just prior to leaving work in 1993. The Board, however, held that unawareness of possible entitlement,¹⁴ lack of access to information¹⁵ and ignorance of the law or one's obligations under it¹⁶ do not constitute exceptional circumstances that excuse a failure to timely file a claim.¹⁷ Appellant noted that she was aware

⁷ *Larry E. Young*, 52 ECAB 264 (2001). See Federal (FECA) Procedure Manual, Part 2 -- Claims, Time, Chapter 2.801.3 (February 2000).

⁸ *Hugh Massengill*, 43 ECAB 475 (1992); *Charlene B. Fenton*, 36 ECAB 151 (1984).

⁹ *Id.*

¹⁰ *Kathryn A. Bernal*, 38 ECAB 470 (1987).

¹¹ *Charlene B. Fenton*, 36 ECAB 151 (1984).

¹² See *Gerald A. Preston*, 57 ECAB ____ (Docket No. 05-1198, issued December 15, 2005); *Ralph L. Dill*, 57 ECAB ____ (Docket No. 05-1620, issued December 6, 2005); *Linda J. Reeves*, 48 ECAB 373 (1997); *Roseanne S. Allexenberg*, 47 ECAB 498 (1996).

¹³ Likewise, there is also no evidence that written notice of the injury was given within 30 days after injury pursuant to 5 U.S.C. § 8119. See 5 U.S.C. § 8122(a)(2).

¹⁴ *Roger W. Robinson*, 54 ECAB 846 (2003).

¹⁵ *Kathryn L. Cornett (Elmer Cornett)*, 54 ECAB 812 (2003)

¹⁶ *George M. Dickerson*, 34 ECAB 135 (1982).

¹⁷ *Michael Thomas Plante*, 44 ECAB 510 (1993).

of a relationship between her employment and her alleged medical condition as of September 5, 1990. Her last exposure to the implicated work factors was January 25, 1993. However, she did not file a claim until July 20, 2005. Her lack of awareness of compensation under the Act or that she was eligible to benefits, do not excuse her failure to timely file an appeal. Appellant did not submit any probative evidence that her circumstances were exceptional such that she could be excused from the three-year filing requirement.

The Board accordingly finds that appellant's claim was not timely filed under 5 U.S.C. § 8122.

CONCLUSION

The Board finds that appellant failed to establish that her emotional condition claim was timely filed pursuant to section 8122 of the Act.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board