

FACTUAL HISTORY

On July 1, 2005 appellant filed a claim for compensation by widow.² The employee, born March 1, 1923, worked in various capacities for the Federal Government from 1945 to 1961. On May 31, 1961 he was separated on disability from his position as a Truck Driver (Heavy). The employee died on December 30, 1963 from pulmonary tuberculosis.

In decisions dated March 23, June 30 and September 27, 2006, the Office denied appellant's claim as untimely.

On October 23, 2006 appellant, through her son and representative, requested reconsideration. She argued that she was fully eligible and entitled to widow's compensation due to the federal service of her deceased husband.

In a decision dated December 27, 2006, the Office denied appellant's request for reconsideration. The Office found that appellant's legal contentions were either repetitious or irrelevant and, therefore, did not warrant a reopening of her case.

LEGAL PRECEDENT -- ISSUE 1

In cases of death occurring between December 7, 1940 and September 6, 1974, a claim for death benefits under the Federal Employees' Compensation Act is barred if a written claim is not filed within five years after death. This five-year period is a maximum, mandatory provision that neither the Office nor the Board may waive regardless of the reasons or circumstances underlying the failure to file within the time prescribed.³

As a statute of limitation, this provision of the Act encourages diligence on the part of claimants and tempers injustice. It prevents as a matter of public policy the investigation and determination of stale claims where evidence might be destroyed or difficult to produce and it puts to rest claims that would otherwise live in perpetuity.⁴

ANALYSIS -- ISSUE 1

When the employee died on December 30, 1963, the statute of limitation began to run. Appellant had no more than five years, or until December 30, 1968, to file a written claim for

² Form CA-5.

³ *Mildred L. Hayley (Major Frank D. Hayley)*, 11 ECAB 550 (1960); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3.b(2)-(3) (March 1993); 5 U.S.C. § 768-70 (Act of September 13, 1960, Pub. L. 86-767, Sec. 205, 74 Stat. 908).

⁴ See generally 100 C.J.S. *Workmen's Compensation* § 436, n.13 (1958). When Congress tempered the one-year limitation of the original Act with a conditional five-year waiver, it sought to stop the filing of many private bills and to help those war-time employees whose circumstances made compliance impossible. S. Rep. No. 421, 79th Congress, 1st Sess. 1 (1945). Congress later eliminated the five-year waiver because its latitude often created inequity. See H.R. Rep. No. 93-1025, 93d Congress., 2d Sess. 5 (1974); *Amending Federal Employee's Compensation Act: Hearing on H.R. 9118 Before the Select Subcommittee on Labor of the House Comm. on Education and Labor*, 93d Congress, 1st Sess. 17 (1973) (statement of Bernard E. Delury, Assistant Secretary of Labor for Employment Standards).

death benefits under the Act. Because she filed her claim on July 1, 2005, well outside this five-year period, her claim is barred by the statute of limitation. There are no exceptions in statutes of limitation other than those enacted by the legislatures.⁵ Her claim is barred as a matter of law. The Board will, therefore, affirm the Office decisions denying appellant's claim for compensation by widow on the grounds that she did not file her claim within five years after the employee's death.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."⁶

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁷

A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meet at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁸

ANALYSIS -- ISSUE 2

Appellant's October 23, 2006 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law nor does it advance a relevant legal argument not previously considered by the Office. Further, appellant submitted no relevant and pertinent new evidence not previously considered by the Office. She made a number of arguments based largely on circumstances, equity and the provisions of other statutes. But as the Board earlier explained, there is no argument that can avoid the statute of limitation. Appellant did not file her claim by December 30, 1968.

⁵ *Hayley, supra* note 3.

⁶ 20 C.F.R. § 10.605 (1999).

⁷ *Id.* at § 10.606.

⁸ *Id.* at § 10.608.

Because appellant's October 23, 2006 request for reconsideration fails to meet one of the three standards for obtaining a merit review of her case, the Board will affirm the Office's December 27, 2006 decision denying that request. She is not entitled to a reopening of her case.

CONCLUSION

The Board finds that appellant's July 1, 2005 claim for death benefits is barred by the applicable five-year period of limitation. The Board also finds that the Office properly denied appellant's October 23, 2006 request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the December 27, September 27, June 30 and March 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 22, 2007
Washington, DC

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

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

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