United States Department of Labor
Employees' Compensation Appeals Board

L.W., Appellant	)	
and	)	**Docket No. 07-336**
	)	**Issued: May 16, 2007**
U.S. POSTAL SERVICE, POSTAL INSPECTION SERVICE, Los Angeles, CA, Employer	)	

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 November 20, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated March 8 and November 2, 2006 denying his 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 this appeal.

ISSUE

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

FACTUAL HISTORY

On August 30, 2005 appellant, then a 57-year-old retired postal police officer, filed an occupational disease claim (Form CA-2), alleging an exacerbation of his "[Department of Veterans Affairs] (VA) service-connected post-traumatic stress disorder" due to factors of his federal employment. He stated that his condition had worsened as a result of unjustified

personnel actions, including agency removals and false accusations by his supervisor which was alleged in a May 22, 2002 traumatic injury claim.[1] Appellant first became aware of his condition on July 12, 1985 and was first aware that his condition was causally related to his employment on August 19, 1987. His last day of work at the employing establishment was May 22, 2002.

The record contains numerous medical reports from appellant's treating physicians relating the history and progression of his post-traumatic stress disorder (PTSD). A May 24, 1985 report from Dr. David A. Gorelick, a Board-certified internist, reflected appellant's history of alcoholism and depression. On January 20, 1988 Dr. Carolyn S. Mohr, a treating physician, diagnosed major depression. She related appellant's reports of stress at work under a Supervisor Gerber, resulting from a 1983 suspension for playing dominos while on duty; a notice of removal for poor attendance; a 1986 termination following an arrest; and a 1988 removal action alleging that he was unfit for duty. In a November 3, 1989 narrative report, Dr. Mohr diagnosed depression secondary to PTSD. She reiterated appellant's reports of having difficulties at work which aggravated his condition, including warnings, suspensions and terminations from 1983 to 1988. The record contains several disability slips from Dr. Mohr, including a May 25, 2002 note indicating that appellant was disabled until at least November 25, 2002 due to PTSD. In a July 13, 2002 attending physician's report, (submitted in File No. 1320559390), Dr. Mohr opined that appellant's PTSD was aggravated by employment factors, stating that his symptoms were under control prior to the May 22, 2002 incident with his supervisor. On February 22, 2003 she stated that his diagnosis of PTSD, due to his memories of combat in Viet Nam in the 1960's, was "long established." On July 29, 2003 Dr. Mohr opined that appellant suffered from major depressive disorder and PTSD, both related to his experiences as a combat veteran of the Viet Nam war. On June 1, 2004 she stated that his symptoms had been exacerbated by his inability to work.

The record also contains reports from Dr. Oscar Moore, Jr., a treating physician. On June 17, 2002 Dr. Moore indicated that appellant was disabled due to PTSD and hypertension, aggravated by his work environment and stress from a May 22, 2002 incident. In an October 24, 2002 attending physician's report, he opined that appellant was disabled from May 22, 2002 through February 14, 2003 due to factors of employment. Disability slips dated October 24, 2002 reflected that appellant continued to be disabled due to PTSD and hypertension aggravated by his employment. In a report dated February 11, 2003, Dr. Albert Sattin provided a diagnosis of service-connected PTSD and opined that appellant had been totally disabled since May 2002 due to a relapse of PTSD. On June 4, 2004 he stated that appellant had been unemployed since May 2002 when he was released from work, in the latest in a series of five firings and suspensions. The record also reflects that appellant was treated beginning August 7, 1989 by clinical psychologists for PTSD related to prolonged exposure to combat.

Appellant submitted a May 13, 1992 memorandum from C.D. Reichle, security supervisor in charge, to Postal Inspector Clarke Coulter regarding an "[i]ndustrial [a]ccident of

[1] On May 23, 2002 appellant filed a traumatic injury claim alleging that he suffered emotional stress disorder, hypertension and headaches due to false accusations and harassment by his supervisor on May 22, 2005 (File No. 132055939). On August 9, 2002 the Office denied appellant's claim. By decision dated March 9, 2004, the Board affirmed the Office's denial of appellant's claim finding that he failed to establish a compensable factor of employment.

April 22, 1992." The memorandum reflected that appellant filed a traumatic injury claim on April 25, 1992 alleging that he suffered emotional stress as a result of accusations that he threatened a fellow employee.[2] The security supervisor concluded that the evidence was insufficient to establish that appellant was suffering from an emotional stress disorder related to his employment.

Appellant submitted several decisions of the Merit Systems Protection Board (MSPB), including an August 19, 1987 decision ordering the employing establishment to cancel appellant's removal retroactively; to restore him effective December 24, 1985; and to award him back pay and benefits. An October 4, 1988 decision dismissed appellant's petition to restore him to active-duty status, based on the employing establishment's agreement to do so upon completion of firearm qualification testing. A March 24, 1993 decision found him entitled to restoration of annual leave between the date of his removal from the employing establishment and his reinstatement. Appellant submitted a June 1, 2001 settlement agreement with the employing establishment whereby it agreed to pay him 12 hours of administrative leave and issue a letter of apology acknowledging that his supervisor acted improperly by criticizing him in public.

On September 26, 2005 the employing establishment controverted appellant's claim as untimely. By letter dated October 17, 2005, the Office informed appellant that the information submitted was insufficient to establish his claim, stating that he had identified no specific incident or factor of employment that caused or permanently altered his service-related condition.

In an undated response to the Office's October 17, 2005 letter, appellant stated that the worsening of his service-connected PTSD and hypertension was due to his unjustified removal by the employing establishment in 1985. He noted that he was restored retroactively effective December 24, 1985, as reflected in the decision of the MSPB dated January 26, 1987.

In a statement dated October 24, 2005, appellant contended that his PTSD condition was exacerbated by the previously alleged incident of May 22, 2002, whereby he was "harassed, intimated, interrogated with false accusations and threaten[ed]." He argued that he was improperly removed from employment on May 24, 1985.

By decision dated March 8, 2006, the Office denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. On March 10, 2006 appellant requested an oral hearing which was held on August 24, 2006. At the hearing, he testified that his claim was for a progression of PTSD aggravation due to unjust personnel actions from August 1984 to May 22, 2002. The hearing representative asked appellant if he ever informed his supervisor that his employment was aggravating or worsening his PTSD. Appellant stated that, when he was hospitalized in 1984, he told Supervisor Gerber that he was suffering from PTSD "due to certain job factors which resulted in them removing [him] five times in the period of time that [he] listed." He stated that in 1992 he submitted a statement from the VA mental health clinic to a Supervisor Wilson and explained to him that he was being treated for PTSD. Appellant testified that he thought that he informed Captain Calvin in September 1997 that a series of incidents

[2] The record does not contain a copy of the traumatic injury claim form.

beginning August 1984 aggravated his PTSD. He identified the incidents alleged to have exacerbated his PTSD as follows: a 1984 suspension; five removals between August 16, 1984 and May 1985; one 14-day suspension; a 1997 confrontation by a supervisor; and a May 22, 2002 traumatic injury. Appellant indicated that he waited until 2005 to file his claim because he realized that his condition had progressed to unemployability.

By decision dated November 2, 2006, the Office hearing representative affirmed the March 8, 2006 decision finding that appellant's claim was untimely filed. He found that the claim was not filed within three years of the last employment exposure and there was no evidence that appellant's supervisor had actual knowledge of an employment-related condition within 30 days of the injury.

LEGAL PRECEDENT

Section 8122(a) of the Federal Employees' Compensation Act[3] states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death." In a case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between his condition and his employment.[4] Where the employee continues in the same employment after he reasonably should have been aware that he has a condition which has been adversely affected by factors of federal employment,[5] the time limitation begins to run on the date of the last exposure to the implicated factors.[6]

The statute provides an exception to the three-year limit for filing, which states that a claim may be regarded as timely if an immediate superior had actual knowledge of the injury within 30 days, or if written notice of injury as specified in section 8119 was given within 30 days.[7] The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[8]

ANALYSIS

The Board finds that appellant's claim was not timely filed. Appellant reported on the Form CA-2 that he was aware of a relationship between the claimed condition and employment as of August 19, 1987. Under section 8122(b), the time limitation begins to run when appellant

[3] 5 U.S.C. § 8122(a).

[4] *L.C.*, 57 ECAB ___ (Docket No. 06-1190, issued September 18, 2006).

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993). *See James A. Sheppard*, 55 ECAB 515 (2004).

[6] *Id. See also L.C., supra* note 4.

[7] 5 U.S.C. § 8122(a)(1) and (2).

[8] 5 U.S.C. § 8122(a)(1); *Eddie L. Morgan*, 45 ECAB 600 (1994).

became aware of causal relationship or, if he continues in the same employment after awareness, the time limitation begins to run on the date of the last exposure to the implicated factors.[9]

The record reflects that appellant last worked in federal employment on May 22, 2002. He has alleged that his last exposure to unjustified personnel action occurred on that date due to false accusations and harassment by his supervisor. However, on March 9, 2004 this Board affirmed the Office's denial of appellant's traumatic injury claim and found that he failed to establish a compensable factor of employment regarding the alleged May 22, 2002 incident. The Board's determination is binding upon the Office[10] and appellant cannot rely on this alleged traumatic event as the basis for his occupational disease claim. Appellant stated that he was exposed to a series of unjustified actions that occurred between August 1984 and May 22, 2002. The most recent action cited by him, with the exception of the May 22, 2002 event, was an alleged 1997 confrontation by a supervisor. Therefore, in this case, the three-year time limitation began to run in 1997. Since appellant did not file the claim until August 30, 2005 he did not file the claim within the three-year time limitation. Even if the time limitation were deemed to run as of the date he ceased employment on May 22, 2005 the claim would still be untimely.

Even though it was not filed within three years of the last exposure, appellant's claim would be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of his alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate supervisor reasonably on notice of appellant's injury.[11] An employee must show not only that his immediate supervisor knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[12] There is no evidence in the record, however, establishing that appellant's immediate supervisor had actual knowledge of his injury within 30 days of the date of an alleged exposure.[13] The only evidence provided by appellant in this regard was his testimony at the oral hearing. When the hearing representative asked him if he had ever informed his supervisor that his employment was aggravating or worsening his PTSD, appellant stated that when he was hospitalized in 1984 he told Supervisor Gerber that he was suffering from PTSD "due to certain job factors which resulted in them

[9] *L.C.*, 57 *supra* note 2. *See also Id.*

[10] *Anthony Greco*, 3 ECAB 84, 85 (1949) (the Board's determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director of the Office). A decision of the Board is final upon the expiration of 30 days from the date of the decision. 20 C.F.R. § 501.6(d). Appellant did not seek reconsideration of the Board's decision pursuant to 20 C.F.R. § 501.7(a). Therefore, this issue is *res judicata*. 5 U.S.C. § 8128; *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998). *See also Hugo A. Mentink*, 9 ECAB 628, 629 (1958).

[11] *Delmont L. Thompson*, 51 ECAB 155 (1999).

[12] *David R. Morey*, 55 ECAB 642 (2004). *Leo Ferraro*, 47 ECAB 350 (1996)

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[13] As noted above, appellant cannot use the previously alleged May 22, 2002 traumatic injury as a basis for his occupational disease claim. Therefore, notice to a supervisor of the alleged May 22, 2002 injury does not constitute actual notice of an exposure in this occupational disease claim.

The record reflects that appellant filed a traumatic injury claim on April 25, 1992 alleging that he suffered emotional stress as a result of accusations that he threatened a fellow employee. Appellant has not included this alleged incident as a basis for his occupational disease claim. Therefore, notice to a supervisor of the alleged May 22, 2002 injury does not constitute actual notice of an exposure in this occupational disease claim.

removing [him] five times in the period of time that [he] listed." In 1992 appellant submitted a statement from the VA mental health clinic to Supervisor Wilson and explained to him that he was being treated for PTSD. He thought that appellant informed Captain Calvin in September 1997 that a series of incidents beginning August 1984 aggravated his PTSD. Appellant did not allege or provide evidence that he gave notice to a supervisor within 30 days of any alleged exposure. The Board finds that these vague and uncorroborated statements do not establish that there was actual notice of a work-related injury. Consequently, the exception to the statute is not met and appellant's claim for compensation is untimely filed.

CONCLUSION

The Board finds that the Office properly determined that appellant's claim for compensation was not timely filed under 5 U.S.C. § 8122.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 2 and March 8, 2006 are affirmed.

Issued: May 16, 2007
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