

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

S.B., Appellant)	
)	
and)	Docket No. 08-680
)	Issued: September 15, 2008
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 9, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' June 28, 2007 merit decision denying his claim for a work-related emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant filed a timely claim.

FACTUAL HISTORY

On March 15, 2004 appellant, then a 58-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained a work-related emotional condition. He claimed that the employing establishment placed him under the supervision of an employee who assaulted him, prevented him from using the employee assistance program and denied him the right to file for disability after he was terminated from the employing establishment. Appellant asserted that he was verbally and physically assaulted by several employees. He stated that he

first became aware that his claimed condition was caused or aggravated by his employment on April 19, 1990.¹

On April 12, 2004 the Office requested that appellant submit additional factual and medical information in support of his claim. In several statements produced in March 2004, appellant indicated that he knew as early as August 27, 1990 that he was disabled by a work-related emotional condition. He alleged that a coworker threatened to kill him and that supervisors repeatedly subjected him to harassment and discrimination by threatening to fire him. Appellant claimed that a coworker assaulted him on June 8, 1996. In a May 22, 1990 report, Dr. James H. Phillips, an attending Board-certified psychiatrist, stated that appellant reported that he was undergoing a great deal of emotional stress and noted that he was “either experiencing a great deal of strain on his job from people who appear to dislike him and want to get rid of him or he is a paranoid man.” He stated, “[I]t is more likely that he has developed some relationships within his job that result in others not wanting him around, however, stresses incurred under these circumstances are so great that I am recommending [appellant] not return to work at this time.”

In an August 27, 1990 report, Dr. Phillips stated that he first saw appellant on April 19, 1990 at which time he was found to be suffering with an “adjustment disorder of adult life with severe anxiety and possible paranoia.” He noted that this condition was a “direct result of the situation on your job.” Dr. Phillips indicated that appellant failed to respond to treatment and became depressed. He noted that during therapy sessions appellant discussed situations which “sounded paranoid” but that he was able to produce documents which verified his treatment by supervisors and coworkers.

In a September 21, 2004 decision, the Office denied appellant’s emotional condition claim on the grounds that he did not establish any compensable employment factors.

Appellant submitted an April 19, 1990 report in which Dr. Phillips indicated that he presented himself for evaluation “stating his present difficulties center around his job.” Dr. Phillips noted that appellant asserted that he did his job so well that he “caught heat” from supervisors that wanted to get him off the job. Appellant claimed that supervisors “set him up” to be assaulted by a man who worked near the employing establishment. Dr. Phillips indicated that appellant asserted that recent conflicts with supervisors led him to be removed from his usual work duties and that supervisors did nothing after a coworker threatened him. He diagnosed “adjustment disorder of adult life with anxiety and possible paranoia.”

¹ Appellant also indicated that he first became aware of his claimed condition on August 27, 1990. His supervisor indicated on the Form CA-2 that appellant was terminated for cause from the employing establishment on July 18, 1996. In a May 11, 2004 statement, another supervisor stated that appellant was terminated from the employing establishment on July 18, 1996 and noted that his actual separation date from the employing establishment was September 15, 1997. The record contains a February 1, 1999 document in which an official from the retirement processing branch of the employing establishment stated that appellant was “removed” on September 15, 1997. In September 1999, the Merit Systems Review Board upheld the employing establishment’s termination of appellant for striking a coworker on June 8, 1996.

In a June 5, 1990 report, Dr. Phillips stated that he had a lengthy therapy session with appellant and discussed the fact that he continued to be “obsessed with the way he has been treated on his job.” He noted, “[Appellant] indicates that he is going to be on workman’s compensation because the stress that he has experienced on his job caused him to be unable to function.”

Appellant requested a hearing before an Office hearing representative. At the October 25, 2005 hearing, he asserted that he sustained stress because the employing establishment wrongly threatened to fire him due to a June 8, 1996 conflict with a coworker. In a January 17, 2006 decision, the Office hearing representative affirmed the Office’s April 12, 2004 decision as modified to reflect that appellant’s emotional condition claim was denied because it was untimely filed. The Office hearing representative found that September 15, 1997, appellant’s last day of work, was his date of last possible exposure to employment factors. Appellant did not file his claim until March 15, 2004, well over three years after his date of last possible exposure, and his immediate supervisor did not have actual knowledge of the claimed on-the-job injury within 30 days.

Appellant submitted statements in which he provided additional details of his claimed work stressors and submitted numerous documents that were already in the record. In a June 28, 2007 decision, the Office affirmed its January 17, 2006 decision.

LEGAL PRECEDENT

A claimant seeking compensation under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,³ including that he is an “employee” within the meaning of the Act⁴ and that he filed his claim within the applicable time limitation.⁵

In cases of injury on or after September 7, 1974, section 8122(a) of the Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁶ Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

- (1) The immediate superior had actual knowledge of the injury or death 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; or

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

⁴ *Kenneth W. Grant*, 39 ECAB 208 (1987); *James E. Lynch*, 32 ECAB 216 (1980); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357 (1951); see 5 U.S.C. § 8101(1).

⁵ *Paul S. Devlin*, 39 ECAB 715 (1988); *Emmet L. Pickens*, 33 ECAB 1807 (1982); *Kathryn A. O’Donnell*, 7 ECAB 227 (1954).

⁶ 5 U.S.C. § 8122(a).

(2) written notice of injury or death as specified in section 8119 was given within 30 days.⁷

Section 8122(b) provides that, in a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.⁸ The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.⁹ 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 this exposure.¹⁰

ANALYSIS

Appellant claimed that he sustained an emotional condition due to various incidents including being subjected to harassment and discrimination by supervisors and coworkers. The Office denied his emotional condition claim on the grounds that it was untimely filed. The Board finds that the Office properly denied appellant's claim on the basis that he did not file a timely claim for an employment-related emotional condition.

The evidence establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between his employment and the claimed emotional condition as early as April 19, 1990. In his March 15, 2004 claim form, appellant stated that he first became aware that his claimed emotional condition was caused or aggravated by his employment on April 19, 1990.¹¹ Moreover, the medical evidence supports a finding that appellant was aware or should have been aware of the causal relationship between his employment and the claimed emotional condition as early as April 19, 1990. In an April 19, 1990 report, Dr. Phillips, an attending Board-certified psychiatrist, indicated that appellant

⁷ Section 8119 provides that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day, and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury, or in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.

⁸ 5 U.S.C. § 8122(b).

⁹ *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁰ *Charlene B. Fenton*, 36 ECAB 151, 157 (1984); *Gladys E. Olney*, 32 ECAB 1643, 1645 (1982).

¹¹ Appellant also indicated on the form that he first became aware of his claimed condition on August 27, 1990, but it is unclear why he indicated he was aware of his claimed condition on a date after he became aware that his claimed condition was related to his employment. As noted above, the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment. See *supra* note 9 and accompanying text.

presented himself for evaluation “stating his present difficulties center around his job.” He noted that appellant asserted that he was subjected to harassment and discrimination by supervisors, that recent conflicts with supervisors led him to be removed from his usual work duties and that he was subjected to assault or threat of assault at work. Dr. Phillips diagnosed adjustment disorder of adult life with anxiety and possible paranoia.¹²

Appellant worked at the employing establishment as late as September 15, 1997 and he claimed that he was subjected to harassment and discrimination up until the time he left the employing establishment.¹³ Therefore, his last possible exposure to the implicated employment factors occurred no later than September 15, 1997. As noted above, 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 this exposure.¹⁴ Therefore, the time limitation in appellant’s case began to run no later than September 15, 1997. Since appellant did not file a claim until March 15, 2004, his claim was not filed within the three-year period of limitation.

Appellant’s claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if written notice of injury was given to his immediate superior within 30 days as specified in section 8119. He has not made any claim that he has satisfied either of these provisions, nor does the record support a finding that he has satisfied either of them.¹⁵

CONCLUSION

The Board finds that appellant did not timely file a claim.

¹² In an August 27, 1990 report, Dr. Phillips stated that he first saw appellant on April 19, 1990 at which time he was found to be suffering with an adjustment disorder of adult life with severe anxiety and possible paranoia. Dr. Phillips noted that this condition was a “direct result of the situation on your job.”

¹³ Some of the documents of record indicate that appellant was terminated from the employing establishment effective July 18, 1996 but it appears that he worked for the employing establishment as late as September 15, 1997.

¹⁴ See *supra* note 10 and accompanying text.

¹⁵ There is no indication in the record that appellant provided a statement to his immediate superior such that he satisfied the provisions of sections 8119 and 8122(a) of the Act. See *supra* note 7 and accompanying text.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 28, 2007 decision is affirmed.

Issued: September 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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