

FACTUAL HISTORY

This is appellant's third appeal before the Board in this case. By decision and order issued February 15, 2005,¹ the Board affirmed an August 2, 2004 decision of the Office denying a recurrence of disability commencing May 8, 2001. The Board found that appellant's physicians attributed the claimed recurrence of disability to September 1995 and April 2001 intervening incidents and not the January 1989 robbery which caused the accepted anxiety disorder. The law and the facts of the case as set forth in the prior decision and order are incorporated by reference.

On August 2, 2007 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to an April 26, 2001 conversation with an injury compensation specialist regarding a job offer. She first became aware of the condition and related it to her employment on April 26, 2001. Appellant stated that the April 26, 2001 incident constituted a new injury, recurrence of disability and a consequential injury. She asserted that the employing establishment had actual notice of the emotional condition on April 26, 2001 when a medical management field nurse visited her at work. On the reverse of the claim form, the employing establishment stated that it first received notice of the claimed emotional condition on August 28, 2007.

In April 30 and September 11, 2001 reports, a medical management field nurse noted visiting appellant and an injury compensation official on April 26, 2001 regarding the physical requirements of an offered position.²

In an October 18, 2007 letter, the Office advised appellant of the additional evidence needed to establish her claim, including evidence to show that it was timely filed within three years of April 26, 2001 or that the employing establishment had actual notice of the condition within 30 days of the incident.

By decision dated November 30, 2007, the Office denied the claim as it was not timely filed under the three-year time limitation of section 8122 of the Act.

In a December 3, 2007 letter, appellant requested a telephonic oral hearing. At the hearing, held March 14, 2008, she noted that the Office had denied her claim for an April 26, 2001 recurrence of disability under File No. xxxxxx188. Therefore, in an attempt to reopen the

¹ Docket No. 04-2134 (issued February 15, 2005). The Office accepted that on January 5, 1989, appellant, then a 31-year-old distribution clerk, sustained an anxiety disorder when she was robbed at gunpoint in the performance of duty. It paid appropriate wage-loss compensation and medical benefits.

² Appellant also submitted medical evidence. Dr. Serge T. Celestin, an attending Board-certified psychiatrist, approved a light-duty job offer on February 13, 2001. He opined that on April 20, 2004, an unspecified 2001 incident caused a recurrence of post-traumatic stress disorder. Dr. Celestin submitted progress notes through March 2005. Dr. Beverly Stubblefield, an attending clinical psychologist, provided progress notes from April 11, 2001 to December 19, 2003 regarding appellant's psychiatric symptoms due to an unspecified May 8, 2001 work incident, family illnesses and deaths. Dr. Janet Seligson-Dowie, an attending Board-certified psychiatrist, noted in an August 9, 2007 report that appellant felt threatened by the April 26, 2001 conversation. Appellant also provided records from a December 2003 psychiatric hospitalization.

denied claim, appellant filed a claim for a new emotional condition commencing April 26, 2001 under File No. xxxxxx555. Following the hearing, she submitted an administrative decision pertaining to another claimant. Appellant also submitted a March 21, 2008 statement asserting that the April 26, 2001 job offer was not an administrative matter and should have been afforded coverage under the Act.

By decision dated and finalized June 5, 2008, an Office hearing representative affirmed as modified the November 30, 2007 decision, finding that appellant's claim was not timely filed within the three-year time limitation of section 8122 of the Act. The hearing representative noted that appellant's claims for emotional conditions commencing April 26 and May 8, 2001 had been previously denied under File No. xxxxxx188. The hearing representative noted that the claim under File No. xxxxxx188 was timely filed within three years of the date of injury. However, as the claim had been denied, the timeliness issue was moot. Therefore, the hearing representative denied the claim on the grounds that it was previously denied.³

LEGAL PRECEDENT

Section 8122(a) of the Act states that an "original claim for compensation for disability or death must be filed within three years after the injury or death."⁴ 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. The Board has also held that, 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.⁵ 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.⁶

ANALYSIS

In the June 5, 2008 decision, the Office acknowledged that appellant filed a timely claim for an emotional condition commencing April 26, 2001 under File No. xxxxxx188.⁷ It denied the claim as the April 26, 2001 incident concerned an administrative matter not within the coverage of the Act. In the present case, on August 2, 2007, appellant filed a claim for an emotional condition commencing April 26, 2001. This claim is untimely under the three-year time limitation of 5 U.S.C. § 8122(a). But more importantly, it is a duplicate of a previously

³ The hearing representative noted that the Office should combine File No. xxxxxx188 with File No. xxxxxx555. It is not clear from the record now before the Board whether the Office doubled the two claims.

⁴ 5 U.S.C. § 8122(a).

⁵ *Mitchell Murray*, 53 ECAB 601 (2002).

⁶ *Edward Lewis Maslowski*, 42 ECAB 839, 846 (1991).

⁷ Appellant filed her claim under File No. xxxxxx188 on September 1, 2001, within the three-year time limitation under 5 U.S.C. § 8122(a). File No. xxxxxx188 was before the Board in a nonmerit appeal. By decision and order issued March 10, 2006 (Docket No. 06-427), the Board affirmed a September 14, 2005 decision denying a request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

denied claim. Appellant acknowledged at the oral hearing that she filed the August 2, 2007 claim in an attempt to reopen the denial under File No. xxxxxx188.

The Board notes that under File No. xxxxxx188, appellant asserted a recurrence of disability while she claimed a new injury under the present claim. She attributed both to the April 26, 2001 job offer conversation. However, as the April 26, 2001 incident was not within the performance of duty, the precise nature of the injury attributed to that incident is irrelevant. The Board therefore finds that the Office properly denied appellant's claim as a duplicate of a previously denied claim.

CONCLUSION

The Board finds that the Office properly denied appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 5, 2008 is affirmed.

Issued: July 13, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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