



to the claim form elaborated that the nature of the illness was injury to neck, shoulders, legs (MCL strain); (neck) cervical radiculopathy and trigger thumb right shoulder rotator cuff tendinitis. She identified the Christmas holiday season, harassment by her supervisor and working conditions at the employing establishment as sources of stress.

Appellant submitted a report from the medical health unit, which appears to be from November 1997, diagnosing her with depression.

Appellant submitted additional evidence, including medical reports and notes, diagnosing various physical conditions, as well as reports indicating that she was treated for an emotional condition in the year 2000, under Office file number xxxxxx597. By decision dated January 5, 2009, the Office denied her claim because it was not filed in a timely manner.

### **LEGAL PRECEDENT**

In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act states that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>1</sup> Section 8122(b) of the Act 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.<sup>2</sup> The Board has 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 exposure.<sup>3</sup>

### **ANALYSIS**

In this case, the Office denied appellant's claim because it was not timely filed.

The Board notes that it is unclear exactly what appellant is alleging. Appellant indicated that she became aware of her emotional condition on December 4, 1993. Her allegations and the evidence submitted from 1993 indicate that she may have sustained a physical injury at that time. Appellant has also alleged that she found working holiday seasons stressful. She did not detail dates and actual duties that caused her alleged stress during holiday seasons. Appellant's last exposure to factors of her federal employment was September 20, 2005, the date she was last employed by the employing establishment. Because she admits awareness of her emotional condition as of December 4, 1993 and the date of last exposure was September 20, 2005, her claim, filed November 6, 2008, was untimely.

In the case of a latent disability, the time for filing the claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware,

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<sup>1</sup> 5 U.S.C. § 8122(b).

<sup>2</sup> *Garyleane A. Williams*, 44 ECAB 441 (1993).

<sup>3</sup> *Larry E. Young*, 52 ECAB 264 (2001). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (April 1995).

that her disability is causally related to her employment.<sup>4</sup> In such a case, the time for giving notice of injury begins to run when the employee knows, or reasonably should have known, that she has a condition causally related to her employment, whether or not there is a compensable disability.<sup>5</sup> Appellant admits that she became aware of her emotional condition on December 4, 1993. She also terminated her employment exposure on September 20, 2005. Because appellant was aware of her emotional condition as of December 4, 1993, the time for filing her claim commenced on the date of last exposure as this is not a case of latent disability. Therefore, her claim was untimely filed.

A claim may also be allowed notwithstanding the time limitation if the employee's "immediate superior had actual knowledge of the injury ... [sufficient] to put the immediate superior reasonably on notice of an on-the-job injury" within 30 days of its occurrence. The record lacks evidence demonstrating that appellant's immediate superior reasonably had knowledge of a work-related emotional condition. The undated health unit record, apparently prepared in 1997, which provides a diagnosis of depression, does not provide any information regarding the cause of appellant's depression.

Finally, the Board notes that the evidence of record indicates that appellant had a prior claim, which may have included a consequential psychiatric component. There is no evidence of record, however, that evidence in that claim would establish timely filing in this matter.

Accordingly, the Board finds that appellant's claim was untimely filed.

### **CONCLUSION**

The Board finds that appellant has not established that her emotional condition claim was timely filed.

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 5, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 17, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board