United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 09-1499**
	)	**Issued: April 26, 2010**
DEPARTMENT OF THE NAVY, NAVAL AIR WEAPONS STATION, China Lake, CA, Employer	)	

Appearances:
Pamela S. Grazer, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 27, 2009 appellant filed a timely appeal of the September 11, 2008 decision of the Office of Workers' Compensation Programs which denied his occupational disease claim on the grounds that it was not timely filed. He also appealed an October 7, 2008 Office decision, which denied further merit review. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[1]

ISSUES

The issues are: (1) whether the Office properly denied appellant's occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122; and (2) whether the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

[1] The Board notes that appellant filed a separate appeal with regard to the Office's December 19, 2008 and March 20, 2009 decisions denying his claim for an attendant allowance, Docket No. 09-1497.

FACTUAL HISTORY

On September 15, 2007 appellant, then a 53-year-old retired accounting technician, filed an occupational disease claim alleging that he had a nervous breakdown at work and developed paranoid schizophrenia. He first became aware of his condition and realized it was caused or aggravated by his employment in March 1994. Appellant stated that the delay in filing his claim was because the employing establishment failed to advise him to submit a Form CA-2. His employer noted that he last worked on May 6, 1994 and had been off the employment rolls since being granted a disability retirement on July 25, 1994. The employer further noted that the illness claimed, paranoid schizophrenia, was accepted under a separate claim, File No. xxxxxx204.[2]

Appellant submitted a statement noting that he was a federal firefighter who sustained a work injury in January 1984. He provided a list of life stressors including financial difficulties. He noted that he had to live on an income of $900.00 per month, often went hungry, was ineligible for food stamps, was evicted from his apartment three days before Christmas with three small kids and was unable to afford transportation. Appellant advised that his children experienced discipline problems and viewed him as a failure because he could not support them. He asserted that the Office failed to vocationally rehabilitate and retrain him and, in 1991, placed him an accounting procurement position that he was not competent to perform, resulting in a nervous breakdown in 1994.

Appellant submitted notices of personnel action dated October 31, 1984 to June 24, 1993 and pay rate information related to his firefighter and accounting technician positions. He submitted a letter to Congressman Bill Thomas dated November 20, 1989 requesting assistance with his compensation claim. Also submitted was correspondence from appellant's wife to the Office dated January 30, 1991 and April 11, 2007 requesting a lump-sum schedule award in File No. xxxxxx204. In a record of a telephone call to the Office dated August 9, 1994, he was instructed to submit a medical report from his physician supporting that his current disability was due to a work-related psychiatric condition. Appellant submitted an October 19, 2005 letter from the Office confirming that File No. xxxxxx204 was open and accepted for sprain/strain of the neck, dislocation of lumbar intervertebra, displaced cervical intervertebra and permanent aggravation of paranoid schizophrenia.

Appellant submitted medical evidence from Dr. Lawrence J. Coates, Ph.D., a clinical psychologist, who treated him for paranoid schizophrenia since 1991. On August 2, 2006 he indicated that he had not worked since 1994 and was seeking an attendant allowance.

[2] Appellant initially worked as a firefighter and on January 14, 1984 he fell and injured his neck while pulling a fire hose. The Office accepted his claim for a neck strain, herniated disc at C5-6 and expanded his claim to include permanent aggravation of paranoid schizophrenia unspecified, File No. xxxxxx204. On January 17, 1984 appellant stopped work and returned to light duty on May 6, 1984 and worked intermittently thereafter. In April 1991, he returned to work as an accounting technician where he continued to work until March 1994 and was then granted disability retirement.

On March 31, 2008 the Office requested additional information to establish his claim for an emotional condition. Appellant submitted documents including cancelled benefit checks dated June 30 and July 30, 1990, which reflected him as deceased, a disability worksheet dated July 25, 1990 relating to insurance withholdings and a February 4, 1991 statement asserting that he was paid at an incorrect rate. He submitted a statement for disability retirement from Dr. Joseph Ezra, a Board-certified psychiatrist, dated June 3, 1994. In reports dated June 3, 1994 to January 30, 2008, Dr. Coates opined that the stress of his orthopedic injuries caused the onset of paranoid schizophrenia. In a December 5, 2007 work capacity evaluation, Dr. Lingaiah Janumpally, a Board-certified neurologist, opined that appellant was totally disabled due to limited mobility from neck pain and poor lung reserve.

In a September 11, 2008 decision, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that it was timely filed in accordance with 5 U.S.C. § 8122. It found that he first became aware of his condition in March 1994 and became aware of the relationship between his employment and the claimed condition in March 1994. The Office advised that appellant retired on July 25, 1994 and did not file his claim until September 15, 2007, which was over three years after he was last exposed to work factors. It further noted that there was no evidence that appellant's supervisor had knowledge of an employment-related injury within 30 days.

On September 25, 2008 appellant requested reconsideration. He did not submit any additional evidence.

By decision dated October 7, 2008, the Office denied appellant's reconsideration request on the grounds that his letter neither raised substantive legal questions nor included new and relevant evidence and was therefore insufficient to warrant review of the prior decision.

LEGAL PRECEDENT -- ISSUE 1

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."[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.[5] 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 this exposure.[6]

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the alleged employment-related injury within

[3] 5 U.S.C. § 8122(a).

[4] *Id.*

[5] *Id*. at § 8122(b).

[6] *See Mitchell Murray*, 53 ECAB 601 (2002); *Alicia Kelly*, 53 ECAB 244 (2001); *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.[7] An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[8]

ANALYSIS -- ISSUE 1

In its September 11, 2008 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that his claim was timely filed in accordance with 5 U.S.C. § 8122.

Appellant indicated on the CA-2 form, notice of occupational disease, submitted on September 15, 2007, that he first became aware of a connection between his claimed emotional condition and his employment in March 1994. Thus, he had actual awareness of the claimed relationship no later than March 1994. The record reveals also that appellant was last exposed to work factors on May 6, 1994, the day he stopped working. Therefore, the time limitations began to run on May 6, 1994, the date on which he was last exposed to conditions of his employment alleged to have caused his claimed condition. Since appellant did not file a claim until September 15, 2007 his claim was filed outside the three-year time limitation period under section 8122(b).

Appellant's claim, however, would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the injury 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.[9] Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.[10]

The record contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. Appellant asserted that he delayed filing his claim because he was never instructed to file a CA-2 form. The Board has held that unawareness of possible entitlement, lack of access to information and ignorance of the law or of one's rights and obligations under it do not constitute exceptional circumstances that could excuse a failure to file a timely claim.[11]

Appellant submitted various documents in support of his claim including notices of personnel actions and pay rate information, a letter to his congressman, cancelled benefit checks, a 1990 disability benefit payment worksheet, a February 4, 1991 statement from appellant asserting the Office used the incorrect pay rate in another claim, a May 22, 1995 statement of

---

[7] 5 U.S.C. § 8122(a)(1); *see also Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(a)(3) (March 1993).

[8] *Charlene B. Fenton*, 36 ECAB 151 (1984).

[9] 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

[10] 5 U.S.C. §§ 8122(a)(1) and (2).

[11] *Roger W. Robinson*, 53 ECAB 846, 851 (2003).

accepted facts, information regarding a schedule award claim and lump-sum payment in File No. xxxxxx204, correspondence dated October 4, 2004 from his attorney, correspondence from Office of Personal Management regarding disability retirement and survivor benefits, a October 19, 2005 letter from the Office confirming that File No. xxxxxx204 was open and accepted for sprain/strain of the neck, dislocation of lumbar intervertebra, displaced cervical intervertebra and permanent aggravation of paranoid schizophrenia, a March 28, 2006 decision denying his claim for an attendant allowance in File No. xxxxxx204 and a September 15, 2007 request for a schedule award in the current claim. However, none of this evidence indicates timely supervisory knowledge of the subsequently claimed emotional condition or otherwise supports that appellant filed a timely claim. Additionally, much of the evidence pertains to another claim filed by appellant that is not part of the present appeal.

Appellant submitted various medical records including reports from Dr. Coates dated June 3, 1994 to January 30, 2008 and a June 3, 1994 statement in support of disability retirement from Dr. Ezra and a December 5, 2007 work capacity evaluation from Dr. Janumpally. However, this evidence provides no support that appellant filed a timely claim or that his immediate supervisor had the type of knowledge to put him reasonably on notice of an on-the-job injury within 30 days. Therefore, the Board finds that the record is devoid of any indication that appellant's immediate supervisor had written notice of his injury within 30 days. The exceptions to the statute have not been met and thus, appellant has failed to establish that he filed a timely claim on September 15, 2007.[12]

On appeal, appellant asserts that the Office failed to pay him for his stress claim, his emotional condition and traumatic injury claims should have been separated and he was paid at an incorrect pay rate in File No. xxxxxx204. However, these matters relate to separate claims and are not relevant to the issue presented in this case.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[13] the Office has the discretion to reopen a case for review on the merits. It must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[14] which provides that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(1) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(2) Advances a relevant legal argument not previously considered by the (Office); or

[12] The Board notes that, to the extent appellant is claiming the same emotional condition previously accepted, the Office Procedure Manual provides that a duplicate cases should be deleted from the system; *see also* Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Creation of Cases*, Chapter 1.400.7 (February 2000).

[13] 5 U.S.C. § 8128(a).

[14] 20 C.F.R. § 10.606(b).

"(3) Constitutes relevant and pertinent new evidence not previously considered by [the Office.]"

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[15]

ANALYSIS -- ISSUE 2

Appellant's September 25, 2008 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, he did not advance a relevant legal argument not previously considered by the Office.

Appellant requested reconsideration and provided no additional evidence or argument on his behalf. Therefore, he did not otherwise show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2). With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, appellant, as noted above, did not submit any new evidence with his reconsideration request.

The Board finds that the Office properly determined that appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied his September 25, 2008 request for reconsideration.

CONCLUSION

The Board finds that the Office properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act. The Board finds that the Office properly denied appellant's request for reconsideration.

[15] *Id*. at § 10.608(b).

ORDER

IT IS HEREBY ORDERED THAT the October 7 and September 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 26, 2010
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