

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

S.J., Appellant

and

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Milwaukee, WI, Employer**

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**Docket No. 09-1567
Issued: February 26, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 June 4, 2009 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 17, 2009. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's claim for compensation was timely filed under 5 U.S.C. § 8122.

FACTUAL HISTORY

On March 22, 2007 appellant filed an occupational disease claim (Form CA-2) alleging that he had sustained depression and post-traumatic stress disorder (PTSD) as a result of his federal employment. He alleged that he was subject to a hostile work environment by his supervisors. On the claim form appellant reported he became aware of his condition and its relationship to employment on April 18, 2001. By letter dated April 19, 2007, the employing

establishment noted that appellant's last day in a pay status was July 13, 2001, and he had been removed from employment effective June 28, 2002.

On May 10, 2007 appellant submitted evidence regarding his claim, including an April 24, 2007 narrative statement. Appellant reported an incident of alleged threatening remarks by a supervisor, although he could not recall the date of the incident. He also stated that another supervisor had for many years made work a nightmare. Appellant previously filed a CA-2 in 1992.

The evidence submitted included a March 29, 2000 decision from an administrative law judge in an Equal Employment Opportunity Commission (EEOC) complaint, finding appellant was subject to a hostile work environment in 1993 and 1994. The decision noted that appellant had sought treatment for depression. In an EEOC "information for precomplaint counseling" dated July 13, 2000, appellant stated that conditions created by his supervisor was aversely affecting his health.

In a report dated October 23, 2001, Dr. Paul Stein, a psychiatrist, reported appellant had been diagnosed with depressive disorder with anxiety, triggered by an incident at work. Dr. Stein stated that appellant had been treated since 1999 for work-related stress.

By decision dated October 23, 2007, the Office denied the claim for compensation, finding appellant had established a compensable work factor regarding a hostile work environment, but the medical evidence did not establish causal relationship with a diagnosed condition.

On August 19, 2008 appellant submitted an August 8, 2008 report from Dr. Kathryn Krieg, a psychiatrist, who stated that appellant had been a patient at the clinic since 2001. There was also a history of treatment by non-Veterans Administration providers prior to 2001. Dr. Krieg diagnosed depressive disorder and indicated that the symptoms dated back to 1993. She stated that appellant had been her patient since 2004.

By decision dated October 7, 2008, the Office found that the March 22, 2007 claim for compensation was untimely filed.

Appellant requested reconsideration and stated that he had filed two previous claims. He argued that he had established causal relationship in this case. In a January 16, 2009 letter, appellant asserted the date of injury should be November 22, 2004, when he began treatment with Dr. Krieg.

In a decision dated March 17, 2009, the Office denied modification of its October 7, 2008 decision. It found the claim was not timely filed.

LEGAL PRECEDENT

Under the Federal Employees' Compensation Act, "An original claim for compensation or death must be filed within three years after the injury or death."¹ This section also indicates

¹ 5 U.S.C. § 8122(a).

that a claim not filed within three years will not be allowed unless the immediate supervisor had actual knowledge of the injury or death within 30 days or written notice of injury was given within 30 days.² 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 his employment and the compensable disability.³

ANALYSIS

The specific claim for compensation in this case was filed on March 22, 2007. Although the record indicates appellant had filed claims for emotional conditions in 1992 and 1997, those claims are not before the Board on this appeal. Appellant filed a new claim for compensation on March 22, 2007 for depression and PTSD causally related to an alleged hostile work environment. The claim must be filed within the time limitations of 5 U.S.C. § 8122.

The initial question presented is when the three-year period began to run in the instant case. As noted, in latent disability cases, the time period begins when appellant was aware, or by reasonable diligence should have been aware, of causal relationship between the condition and the alleged employment factor. It is not clear what specific incidents appellant is alleging in the March 22, 2007 claim constituted a hostile work environment. A March 29, 2000 EEOC decision found a hostile work environment in 1993 and 1994 and noted that appellant had been receiving medical treatment for a depressive condition. Appellant also referred to incidents that may have occurred until the time he stopped working in 2001. The medical evidence from Dr. Stein advised that appellant had been treated since 1999 for work-related stress. In a July 13, 2000 EEOC document, appellant stated his health was adversely affected by conditions at work. Appellant himself reported on the claim form that he was aware of a causal relationship with his federal employment as of April 2001. While appellant later argued that the proper date for determining the timeliness of this claim should be November 2004 when he began treatment with Dr. Krieg, the evidence does not support this argument. Dr. Krieg noted that appellant had been treated since 1993. Her report does not suggest that appellant would not have become aware of an emotional condition causally related to the alleged employment factors only as of 2004.

The Board finds appellant was aware, or reasonably should have been aware, of a causal relationship between the claimed emotional condition and the employment factors prior to his removal from work effective June 28, 2002. It is noted that when there is continued exposure to the alleged employment factors, the time limitation period does not begin until the date of last exposure.⁴ To the extent appellant is alleging employment incidents that occurred up until his removal from employment in 2002, the date of last possible exposure would be June 28, 2002. In addition, no evidence was presented to establish actual knowledge of the injury by the immediate supervisor within 30 days or written notice within 30 days of the specific claim at

² *Id.*

³ 5 U.S.C. § 8122(b).

⁴ *Alicia Kelly*, 53 ECAB 244, 246 (2001); *Larry E. Young*, 52 ECAB 264, 266 (2001).

issue. The Office properly found the claim to be untimely filed under 5 U.S.C. § 8122 as appellant filed it more than three years after June 28, 2002.

CONCLUSION

The Board finds that the March 22, 2007 occupational claim was not timely filed pursuant to 5 U.S.C. § 8122.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 17, 2009 and October 7, 2008 are affirmed.

Issued: February 26, 2010
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