

when he learned his PTSD was employment related on February 15, 2004, he promptly notified the employing establishment. Appellant attributed his condition to his “constructive discharge” in August 1978. The employing establishment controverted the claim on the basis that it was untimely, noting that appellant had not worked since 1978 and he filed his claim almost five years after he reportedly first learned his PTSD condition was employment related.

Appellant is a Vietnam era veteran. He was on active duty from October 19, 1967 through February 23, 1976. Department of Veterans Affairs (VA) medical records establish that he was first diagnosed with delayed onset PTSD in July 1997.² The VA determined that the condition was service-connected and awarded appellant disability benefits. In addition to his VA benefits, appellant received disability benefits from the Social Security Administration for anxiety disorders, with a January 1, 1997 onset.

Dr. Bobby A. Miller II, a Board-certified forensic psychiatrist, evaluated appellant on January 27, 2004. He noted a history of “[b]ack injury in 1996.” Appellant was working in food service at West Virginia University when he injured his back in 1996. He continued to work for one year following his injury and then retired in January 1997. Dr. Miller diagnosed PTSD, delayed onset with moderate symptoms and alcohol abuse. He indicated that appellant experienced a traumatic event in Vietnam in 1967, but was in a state of denial. Appellant’s subsequent pursuit of work and family affairs allowed him to maintain a barrier between his everyday life and his past psychological traumas. Once he retired, he had “too much time to think.” Appellant was treated at a VA medical facility in 1997 and was diagnosed with PTSD.

Dr. Miller explained that, while the root of appellant’s PTSD was from a Vietnam experience in 1967, the triggering event, which brought forth his current symptomatology, “flowed from the consequences of his work[-]related injury.” After “injury” is a handwritten notation “in 1978.” However, Dr. Miller did not reference a 1978 work-related injury at any point in his report. The work-related injury he referred to was appellant’s 1996 back injury. While Dr. Miller noted that appellant worked at the Kennedy Youth Center (FCI Morgantown) for approximately 18 months in the 1970s, there was no mention of any particular injury occurring at that time. He mentioned injuries to both knees working as an underground coal miner between 1981 and 1988, and appellant’s more recent 1996 back injury. Dr. Miller explained that, while it may seem implausible that an individual would have a ““delayed onset”” of a psychiatric illness three decades after the stressor, in this instance, the psychological history supported this condition.

On April 5, 2004 appellant contacted an equal employment opportunity (EEO) counselor, and on April 13, 2004 he filed a formal EEO complaint alleging that his dismissal in August 1978 caused a delayed onset of his PTSD. The employer dismissed appellant’s EEO complaint as untimely. The reason for the dismissal was because the alleged discrimination occurred on or about August 18, 1978, and appellant waited more than 45 days before initiating the EEO complaint process.

Martin L. Boone, Ph.D., a neuropsychologist, evaluated appellant on July 7, 2004. He diagnosed PTSD, delayed onset. Dr. Boone indicated that appellant had likely been experiencing

² In 1997 appellant sought treatment at a VA medical facility for a back injury he sustained while employed at West Virginia University. After being examined for his back injury, appellant was referred for PTSD screening.

some level of PTSD since returning from Vietnam in 1968. He noted that appellant reported experiencing a substantial increase in these symptoms after a very stressful occupational experience associated with his employment at Morgantown in the late 1970s. Dr. Boone stated that appellant told him he was forced to resign or be fired, without any apparent justification. Afterwards, appellant was extremely worried about his finances. Dr. Boone stated that “anxiety disorders are known to exacerbate at times of increased stress.”

On November 4, 2004 appellant’s counsel filed an appeal with the EEO Commission seeking a reversal of the September 17, 2004 dismissal of the April 2004 EEO complaint. Counsel argued that, although appellant filed his complaint outside the 45-day time limitation, he did not know of his condition until shortly before he filed the complaint. While appellant knew he had some sort of problem, he did not receive a formal diagnosis until Dr. Boone’s July 7, 2004 evaluation. Counsel noted that within 45 days of receiving the report, appellant initiated the complaint.³ The EEO Commission subsequently upheld the dismissal of appellant’s April 2004 EEO complaint. He later filed a civil suit in federal district court. Appellant’s March 29, 2005 complaint was dismissed with prejudice on September 27, 2006. The court similarly found that the April 2004 EEO complaint was untimely.

On February 20, 2009 the Office wrote to appellant advising him that it did not appear he had filed his claim in a timely fashion. It explained the three-year filing requirement under 5 U.S.C. § 8122. The Office noted that appellant claimed to have been aware of the employment-related nature of his condition in 2004, but waited until November 2008 before filing his claim. It explained that he needed to demonstrate that the employer had actual knowledge of the alleged work-related condition within 30 days of the date of injury. The Office afforded appellant 30 days to submit additional information.

Appellant’s attorney submitted additional medical evidence on March 4, 2009. Appellant also submitted a May 12, 2009 statement in which he noted that he filed a discrimination complaint in 1978.⁴

In a decision dated July 10, 2009, the Office denied appellant’s November 20, 2008 occupational disease claim, finding that it was untimely filed. It determined that Dr. Boone’s July 7, 2004 report put appellant on notice of the possible relationship between his PTSD and his federal employment. Appellant did not file his claim within three years of that date and there was no evidence to establish that his immediate superior had actual knowledge of the work-related condition within 30 days of the injury.

Appellant’s current attorney requested a hearing, which was held on October 23, 2009. Appellant testified that he knew about his employment-related injury in 2004 based on Dr. Boone’s July 2004 report, however, he did not know at the time that he could file a workers’ compensation claim. It was not until the fall of 2008, after appellant had filed a complaint with the Merit Systems Protection Board, that he realized he could file a claim for workers’ compensation benefits.

³ Notwithstanding counsel’s argument, appellant’s April 2004 EEO complaint preceded Dr. Boone’s July 7, 2004 report by approximately three months.

⁴ Appellant’s 1978 complaint was for alleged racial discrimination.

By decision dated December 14, 2009, an Office hearing representative affirmed the July 10, 2009 decision. He found that as of July 7, 2004 appellant was aware of a diagnosis relating his PTSD to his former federal employment; however, appellant waited more than three years before filing his occupational disease claim. The hearing representative found that appellant's assertion that he was unaware of the filing requirements was not sufficient cause or reason for his failure to file a timely claim.

LEGAL PRECEDENT

Section 8122(a) of the Federal Employees' Compensation Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁵ A claim filed outside this timeframe must be disallowed unless the immediate superior had actual knowledge of the injury or death within 30 days.⁶ An otherwise untimely claim will also be considered timely if the immediate supervisor received written notice within 30 days of the date of injury or death.⁷

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 the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment.⁸ An employee with actual or constructive knowledge of his employment-related condition, who continues to be exposed to injurious working conditions, must file his or her claim within three years of the date of last exposure to the implicated conditions.⁹

ANALYSIS

On his November 20, 2008 claim (Form CA-2), appellant indicated that he first realized his condition was caused or aggravated by his employment on February 15, 2004. He later claimed that it was Dr. Boone's July 7, 2004 report that put him on notice that his August 1978 forced resignation was responsible for his delayed onset on PTSD. Whether appellant learned of the employment-related nature of his condition on February 15 or July 7, 2004, he still waited more than three years afterwards before filing his claim. As such, his November 20, 2008 claim is untimely on its face.¹⁰ The hearing representative properly indicated that appellant's purported unfamiliarity with the Act's filing requirements did not excuse his untimely filing.¹¹ Moreover,

⁵ 5 U.S.C. § 8122(a) (2006).

⁶ The knowledge must be such to put the immediate superior reasonably on notice of an on-the-job injury. 5 U.S.C. § 8112(a)(1).

⁷ 5 U.S.C. § 8122(a)(2) (the written notice provided must be in accordance with 5 U.S.C. § 8119).

⁸ 5 U.S.C. § 8122(b); 20 C.F.R. § 10.101(c) (2009).

⁹ *E.g., James A. Sheppard*, 55 ECAB 515, 518 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993).

¹⁰ *See* 5 U.S.C. § 8122(a).

¹¹ 5 U.S.C. § 8122(d)(3) ("exceptional circumstances"); *see Ralph L. Dill*, 57 ECAB 248, 253-54 (2005) (ignorance of the law or one's obligations under it does not constitute "exceptional circumstances" that would otherwise excuse an untimely filing).

there is no evidence that appellant's immediate superior received written notice or had actual knowledge of his injury within 30 days of the date of injury, which in this case would be 30 days from August 18, 1978 -- the date appellant last worked for the employing establishment.¹² Appellant claimed he filed a racial discrimination complaint in 1978, however, the details of the complaint are not clearly reflected in the record. Also, he did not submit evidence to establish that his immediate superior or another employing establishment official had actual knowledge of his PTSD within 30 days of his last employment exposure. Accordingly, the Board finds that the Office properly denied appellant's claim.

CONCLUSION

Appellant's November 20, 2008 occupational disease claim was untimely.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 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

¹² 5 U.S.C. § 8122(a)(1), (2); *Ralph L. Dill*, *supra* note 11 at 251-52.