



walking in the crosswalk at the CSB and slipped on the yellow paint and fell onto her knee and twisted her ankle.” On the same form, Silvia C. Molina, a financial supervisor, stated that she was not appellant’s manager at the time of the claimed May 4, 2007 injury. She indicated that she first received notice of the injury on November 21, 2011.

In a December 13, 2011 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim within 30 days of the letter. It asked her to complete an attached questionnaire which contained questions regarding the circumstances of the claimed May 4, 2007 injury.

On January 12, 2012 appellant submitted a copy of the questionnaire, which contained her handwritten answers to its questions. In response to a question regarding whether anyone witnessed the May 4, 2007 injury, she indicated that it was witnessed by a coworker, Dolores Madison, but that she had been unable to contact Ms. Madison.<sup>2</sup> Appellant asserted that she immediately reported the May 4, 2007 injury to an unspecified “manager” and claimed that she filed a claim for the injury on the day that it occurred.

In a January 13, 2012 decision, OWCP denied appellant’s claim for a May 4, 2007 injury on the grounds that her claim was not timely filed. It determined that she did not file her claim within three years of the claimed May 4, 2007 traumatic injury and that there was no evidence that she reported it to her immediate supervisor within 30 days or that she provided written notice within 30 days with the meaning of section 8122 of FECA.

### **LEGAL PRECEDENT**

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.<sup>3</sup> In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

“(1) the immediate superior had actual knowledge of the injury or death 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; or

“(2) written notice of injury or death as specified in section 8119 was given within 30 days.”<sup>4</sup>

Section 8119 of FECA provides: that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal

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<sup>2</sup> Appellant provide additional description of the claimed May 4, 2007 injury and asserted that it occurred on the employing establishment premises.

<sup>3</sup> *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

<sup>4</sup> 5 U.S.C. § 8122(a).

delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury or in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.<sup>5</sup> Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.<sup>6</sup>

When a traumatic injury definite in time, place and circumstances is involved, the time for giving notice of injury and filing for compensation begins to run at the time of the incident, even though the employee may not have been aware of the seriousness or ultimate consequences of his or her injury.<sup>7</sup> 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant's claim a work-related injury on May 4, 2007 should be denied on the basis that she did not file a timely claim.

On November 17, 2011 appellant filed a traumatic injury claim alleging that she sustained a left ankle knee injury due to fall at work on May 4, 2007. The time for her giving notice of injury and filing for compensation began to run at the time of the claimed incident on May 4, 2007.<sup>9</sup> Appellant did not file her claim for a work injury until November 17, 2011. Therefore, she did not file her claim within the requisite three years of her awareness of the possible relationship between the implicated employment incident and the claimed medical condition.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if her immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if written notice of injury was given to her immediate superior within 30 days of the claimed injury as specified in section 8119. She has not satisfied either of these provisions. Appellant stated that she immediately reported the claimed May 4, 2007 injury to an unspecified manager, but she did not submit any evidence to corroborate this claim.<sup>10</sup> She also asserted that she filed a compensation claim on May 4, 2007, but she did not submit any evidence establishing that she actually filed such a claim despite being provided an opportunity to do so. The record does not contain evidence that appellant satisfied the strictures of section 8122 such that her claim was timely.

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<sup>5</sup> 5 U.S.C. § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

<sup>6</sup> *Laura L. Harrison*, 52 ECAB 515 (2001).

<sup>7</sup> *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

<sup>8</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>9</sup> See *supra* note 7 and 8.

<sup>10</sup> Appellant's current supervisor indicated that she was not her supervisor on May 4, 2007 and that she did not learn of the claimed injury until November 21, 2011.

For these reasons, OWCP properly denied appellant's claim for a May 7, 2007 injury because it was untimely filed.

**CONCLUSION**

The Board finds that OWCP properly denied appellant's claim for a May 4, 2007 injury on the grounds that it was untimely filed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 13, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 16, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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