

FACTUAL HISTORY

On August 21, 2013 appellant, then a 54-year-old senior claims examiner, filed a traumatic injury claim alleging that on June 9, 2010 she began to hyperventilate and sustained high blood pressure and a rise in her blood sugar due to her supervisor, Maria Munoz, calling her into a meeting 10 minutes prior to her workday ending and prevented her from leaving. She alleged that Ms. Munoz threatened her with being written-up unless she could provide evidence supporting her work limitations. The employing establishment controverted the claim on the grounds that it was not in the performance of duty.

In an August 26, 2013 statement, Ms. Munoz provided information regarding the alleged June 9, 2010 incident. She stated that she requested that appellant meet with her at approximately 4:08 pm to follow up on an earlier discussion regarding appellant's performance, accomodation requests and medical documentation. Appellant became upset within 10 minutes of the meeting and at that point she ended the disucssion. She did not leave the room, stating that she did not want to be seen teary eyed and upset. At this point, appellant stood for a few minutes and declined Ms. Munoz's suggestion of going to the nurse's station. Ms. Munoz noted that appellant stated that she was feeling unwell and needed to lie down. At this point, she called 911 and appellant was taken by paramedics to the hospital. Appellant was out of the office the following day, but returned to work on June 14, 2010.

In support of her claim, appellant submitted a June 9, 2010 emergency department work status form from Dr. Naomi Dabby, an examining physician. She was released to regular work effective June 11, 2010.

In a letter dated August 29, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Specifically, it advised her that the evidence of record failed to show that her claim had been timely filed. OWCP noted that appellant's claim had not been filed within three years of the June 9, 2010 incident and there was no evidence that her employing establishment had knowledge that she suffered from a job-related condition due to the alleged incident within 30 days. Appellant was advised as to the medical and factual evidence required to establish her claim and given 30 days to provide this information.

In response to OWCP's request, appellant submitted the following evidence. In an August 8, 2013 statement, she noted that Ms. Munoz wanted to have a quick meeting 10 minutes before she was scheduled to leave for the day. According to appellant, she felt interrogated, badgered and harassed by Ms. Munoz as a result of discussing work accommodations, leave usage and her medication. She stated that Ms. Munoz kept talking even though appellant told her that she was off work and had missed several trains to go home. Appellant related that she felt her blood sugar and blood pressure rising. At the same time, she stated that she began sobbing and shaking and, the next thing she knew, paramedics had been called and they took her to the hospital. In concluding, appellant stated that she felt embarrassed and humiliated because of her panic attack and that she was haunted by the experience.

In an August 21, 2013 report, Dr. Philip D. MacFarland, Ph.D., a licensed clinical psychologist, noted that he had treated appellant since April 27, 2013. He reported that she had a panic attack at work on June 9, 2010 and that she had not worked since November 23, 2010.

Dr. MacFarland noted that appellant sustained a right knee injury on that date and that she remains disabled. He reported that her benefits for her right knee were terminated by a January 25, 2013 decision on the basis that the condition had resolved.

By decision dated October 7, 2013, OWCP denied appellant's claim on the grounds that she failed to file her claim within the time frames set forth in 5 U.S.C. § 8122.

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.² In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides:

“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.”³

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 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. Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁴

Section 8122(b) provides that the time for filing in latent disability cases 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 and 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.⁵ For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that

² *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Charles Walker*, 55 ECAB 238 (2004).

³ 5 U.S.C. § 8122(a).

⁴ *Laura L. Harrison*, 52 ECAB 518 (2001).

⁵ 5 U.S.C. § 8119(b); *Delmont L. Thompson*, 51 ECAB 166 (1999).

he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.⁶

ANALYSIS

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA. On August 21, 2013 appellant claimed that on June 9, 2010 she sustained high blood pressure and a rise in her blood sugar due to her supervisor requesting her attendance at an unscheduled meeting immediately prior to her departure from work.

Section 8122 provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁷ Appellant did not file a claim for the alleged June 9, 2010 injury until August 21, 2013, more than three years after the incident giving rise to the claimed injury.⁸ However, her 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 within 30 days. Appellant has not satisfied either of these requirements.⁹ While it is clear from the record that the incident occurred and that she was taken to the hospital, the record does not establish that she sustained an injury due to this incident and that the injury was related to the June 9, 2010 incident such that any supervisor at the employing establishment would be aware that her claim was timely filed under the provisions of section 8122.

For the above reasons, appellant's claim is not timely filed and is barred by the applicable time limitations provisions of FECA.

On appeal, appellant contends that her claim was timely as her supervisor had knowledge of her injury. She alleges that her supervisor was aware of her panic attack at the time and that the employing establishment was also aware of her high blood pressure and high sugar levels. Contrary to appellant's contention, there is no evidence that her supervisor or the employing establishment had any knowledge within 30 days of the June 9, 2010 incident regarding her panic attack or that the incident caused or aggravated her high blood pressure and high sugar levels. The June 9, 2010 emergency department work status form from Dr. Dabby released appellant to regular work effective June 11, 2010. The note contained no diagnosis of a panic attack, high blood pressure or high sugar level such that it would put the employing establishment on notice. The August 21, 2013 report from Dr. McFarland also is insufficient to establish any awareness on the part of her supervisor or the employing establishment. Dr. McFarland was not treating appellant at the time of the alleged incident and she did not come under his care until April 27, 2013, which was almost three years after the alleged incident and

⁶ *Id.* at § 8122(b); *Duet Brinson*, 52 ECAB 168 (2000).

⁷ *Id.* at 8122.

⁸ *Supra* note 3.

⁹ For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury. *David R. Morey*, 55 ECAB 642 (2004).

panic attack. Moreover, most of his report concerns an employment-related right knee injury, which occurred on November 23, 2010 and the termination of her compensation benefits by a January 25, 2013 decision under a separate claim number.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2013 is affirmed.

Issued: July 7, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

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

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