



By letter dated March 14, 2013, the employing establishment controverted appellant's claim by alleging that the claim was not timely filed and that there is no documentation to support appellant's claim of a fall on June 22, 2009. Mr. Sims indicated that when he asked appellant why it took four years to even mention pursuing filing an injury claim, she stated that she was anticipating trying to transfer to another facility and wanted to make sure that she could be treated for her injuries and also she wanted to make sure that the incident was documented. He stated that appellant also told him that she did not know anything about filing an injury claim and believed that she would be okay. Mr. Sims noted that during the telephone conversation on March 6, 2013 appellant only informed him of a fall she had on December 6, 2010, which she claimed Postmaster Paul Frazier acknowledged was reported to him, and that appellant told him that she did not wish to seek medical treatment or file an injury claim. Mr. Sims stated that, although appellant indicated that she had told Mr. Frazier about the June 22, 2009 incident, he had no recollection of such incident. Mr. Sims concluded by noting that on March 12, 2013 his office was notified that appellant presented three claims of injury: one for June 22, 2009 and two claims for injuries on December 6, 2010.

The record also contains hospital records for a visit to National Park Medical Center indicating that appellant was treated for plantar fasciitis on October, 25, 2010.

In response to a March 21, 2013 letter from OWCP asking appellant to submit further evidence, she submitted an April 18, 2013 note wherein a physician's assistant indicated that appellant was currently being treated for left arm pain after a fall at work.

By decision dated April 26, 2013, OWCP denied appellant's claim because it was not timely filed within three years of the date of the alleged injury, *i.e.*, June 22, 2009. It further denied her claim as untimely filed as her supervisor had no knowledge of the alleged injury within 30 days of its occurrence.

On May 13, 2013 appellant, through counsel, requested a telephonic hearing with an OWCP hearing representative. At the hearing held on October 13, 2013, appellant noted that on June 22, 2009 she tripped and fell on steps in the performance of her federal duties. She testified that when she returned to the office she told Mr. Frazier what happened and showed him her arm. Mr. Frazier told her to write down what happened. Appellant indicated that she wrote a statement and that Mr. Frazier made a copy and returned the original. She noted that he told her to let him know if she saw a doctor, but that he never told her to fill out a claim form. Appellant noted that she went to the emergency room in October 2010 because her arm was hurting and that she took this hospital report to Mr. Frazier and gave him a copy of it. She noted that she fell two more times in 2010 and injured the same arm. Appellant stated that Mr. Frazier refused to give her a claim form even though she requested one. She testified that her arm still hurt.

In an April 30, 2013 statement from a coworker, Wesley Murdock stated that appellant contacted him in 2010 concerning an injury she sustained while carrying mail on her route, and wanted his help in pursuing her employment-related injury. He told her to file a Form CA-17 to go to her physician to document the injury. Mr. Murdock noted that during that time Mr. Frazier was acting supervisor.

Appellant also submitted additional medical documentation, including notes from a June 17, 2009 medical appointment and more complete notes from her October 24, 2010 visit to the National Park Medical Center for plantar fasciitis and left arm pain.

By decision dated January 23, 2014, OWCP's hearing representative affirmed OWCP's April 26, 2013 decision.

### **LEGAL PRECEDENT**

Section 8122(a) of FECA<sup>1</sup> provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>2</sup> In cases involving a traumatic injury, the time limitation begins to run on the date of the incident even though the employee may not be aware of the seriousness or ultimate consequences of the injury or the nature of the injury is not diagnosed until sometime later.<sup>3</sup>

Even if a claim is not filed within the required three-year period, it is still regarded as timely under section 8122(a)(1) if the claimant's immediate superior had actual knowledge of the alleged employment injury within 30 days.<sup>4</sup> The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury. Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.<sup>5</sup>

### **ANALYSIS**

The issue is whether appellant filed a claim for compensation within the applicable time limitation provided by FECA.

Appellant claimed that she fell on June 22, 2009 during the course of her federal employment as a city carrier. The Board has held that, in cases involving a traumatic incident of which employee is immediately aware, the time for filing a claim begins to run at the time of the traumatic incident even though all sequelae of the injury may not be known until later.<sup>6</sup> Thus, the time for filing a claim for compensation began to run at the time of the alleged fall on June 22, 2009. As appellant's claim was not filed until March 7, 2013, over three years after the alleged incident, it is untimely.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193

<sup>2</sup> *Id.* at § 8112.

<sup>3</sup> *See Paul S. Devlin*, 39 ECAB 715 (1988); *Kenneth W. Beard*, 32 ECAB 210 (1980).

<sup>4</sup> 5 U.S.C. § 8122(a)(1). *See also B.C.*, Docket No. 09-2147 (issued July 16, 2010); *Hugh Massengill*, 43 ECAB 475 (1992).

<sup>5</sup> *Id.* at §§ 8122(a)(1), 8122(a)(2).

<sup>6</sup> *Corey W. Davis*, 57 ECAB 674 (2006).

However, appellant's claim may 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.<sup>7</sup> The evidence does not support that appellant's immediate superior, Mr. Frazier, had actual knowledge of the injury or written notice of the injury within 30 days. Although appellant alleged that she told him on the date of the incident and showed him her arm, the record does not verify that appellant reported the injury to him at that time. Appellant stated that Mr. Frazier asked her to give him a written statement as to what happened, and the record contains a copy of a June 22, 2009 note written by appellant. There is no conclusive evidence that this note was ever received by Mr. Frazier. Further, there is no evidence that he received any medical records within 30 days that would have put him on notice of the injury and its employment relationship. The first medical notes after the June 22, 2009 injury were the hospital records from appellant's visit on October 25, 2010, over one year later. The June 17, 2009 medical notes preceded the date of appellant's alleged injury.

The witness statement from Mr. Murdock, fails to establish that appellant notified her supervisor within 30 days of the alleged incident. There were no specific dates or other facts which verified such contact.

The Board has held that unawareness of possible entitlement, lack of access to information and ignorance of the law or one's rights and obligations under it do not constitute exceptional circumstances that would excuse a failure to timely file a claim.<sup>8</sup> Accordingly, as appellant failed to file a timely claim and as her supervisor did not have actual or imputed knowledge within 30 days of the alleged June 22, 2009 incident, appellant's claim was not timely filed.

### CONCLUSION

The Board finds that appellant's claim for a traumatic injury was not timely filed pursuant to 5 U.S.C. § 8122.

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<sup>7</sup> 5 U.S.C. § 8122(a)(1), (2). *See also David R. Morey*, 55 ECAB 642 (2004).

<sup>8</sup> *Roger W. Robinson*, 54 ECAB 846 (2002); *see also, Mancil O. Slaton*, Docket No. 06-955 (issued July 21, 2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 23, 2014 is affirmed.

Issued: July 18, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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