

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

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M.B., Appellant )  
and ) Docket No. 14-99  
DEPARTMENT OF THE INTERIOR, FISH & )  
WILDLIFE SERVICE, COLUMBIA ) Issued: June 19, 2014  
NATIONAL WILDLIFE REFUGE, Othello, WA, )  
Employer )  
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)

*Appearances:*

*Case Submitted on the Record*

*Appellant, pro se*

*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 21, 2013 appellant filed a timely appeal from the September 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 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 filed a timely claim for compensation under 5 U.S.C. § 8122(a).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 31, 2013 appellant, then a 60-year-old wildlife refuge specialist, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2006 she was injured by a tick bite. She noted that she had been bitten by an insect twice during the same week. Appellant later found a bulls-eye rash on her left hand and left thigh. She included a witness statement from a coworker, Larry Ferguson, who stated that appellant had shown him a wound on her thumb that she had thought was a bite from a recluse spider. Appellant's supervisor, Sue McDonald, noted that she was not appellant's supervisor on the date of injury, but that appellant had reported her claimed injury on January 7, 2013.

In a letter dated February 28, 2013, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It afforded her 30 days to submit additional evidence and respond to its inquiries, noting that she had not submitted evidence to support that she provided timely notification of her injury.

By decision dated March 26, 2013, OWCP denied appellant's claim.<sup>2</sup>

On April 1, 2013 appellant requested reconsideration of her claim.

In a statement dated January 24, 2013, appellant responded to OWCP's inquiries. She stated that, as a refuge operations specialist, she was assigned to live in government quarters at the Sheldon National Wildlife Refuge from April 2000 through March 2006 and at Hart Mountain National Antelope Refuge from April 2006 through July 2010. Appellant noted that she lived in an old ranch in the former position and in a house surrounded by meadows and upland sagebrush steppe in the latter position. She explained that, although the diagnostic rash associated with Lyme disease did not appear until 2008, she believed that she had contracted Lyme disease in 2006.

Appellant noted duties of her position, such as observing wildlife, placing radio ear tags on wildlife, recovery of radio ear tags, trapping of deer mice (hosts of the deer tick) and spraying weeds and stated that she had encountered hundreds of ticks in this time. She wrote, "The tick that transmits Lyme disease, the black-legged or deer tick, is very small and seldom detected. Most people, including myself, do not know they were bitten by a black-legged tick until they are diagnosed with Lyme disease."

Appellant recalled that, beginning on June 26, 2006 and throughout 2007 and 2009, she felt weak, exhausted and nauseated and included entries from her work journal to this effect. In January 2008, she awoke to find a red rash on the top of her hand below the thumb. This rash grew daily and appellant initially thought that it was the result of a spider bite. The rash soon improved, but her other symptoms, such as extreme weariness and feeling of cold, remained.

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<sup>2</sup> This decision was later superseded by a decision dated April 18, 2013, after OWCP determined that it had not given appellant a full 30 days to submit additional evidence and respond to its inquiries before issuing a formal decision.

Appellant reported that her supervisors requested that she find a specialist for diagnosis and treatment and that these specialists had suggested stress as the likely cause of her condition. She began counseling and continued to record her symptoms in a work journal. Appellant noted that she began to have arthritis symptoms in her hands, knees, jaw and neck for which she sought treatment. On August 13, 2009 she underwent surgery for a meniscus tear in her right knee from a work-related fall. In 2011, appellant stated that she was diagnosed with methicillin resistant staphylococcus aureus (MRSA), which was treated. She also stated that she had been diagnosed with rheumatoid arthritis in 2011 and that she experienced difficulty sleeping. Appellant noted that she was diagnosed with Lyme disease in 2012, writing, "When Dr. Penney Stringer asked if I'd ever had erythema migrans, the diagnostic *Borrelia burgdorferi* rash, a picture of the rashes flew to my mind and for the first time, I connected them with my illness." She observed that she had been very healthy prior to 2006, but that, since that time, she had been constantly exhausted, in pain throughout her body and unable to care for herself or her livestock. Appellant stated that she was currently taking drugs for both Lyme disease and rheumatoid arthritis.

On December 20, 2012 appellant's supervisor from April 2007 through August 2009, Robert Bundy recalled that appellant had visited numerous physicians. He encouraged her to see physicians due to her symptoms noted as headaches, lethargy, difficulty swallowing and pain. Mr. Bundy stated that he only had recently become aware that her symptoms were consistent with Lyme disease. He noted that he was not aware of any tick bites.

In an electronic message dated December 31, 2012, Lori Chappel, a volunteer coworker, recalled that appellant had exhibited fatigue and inability to concentrate. She stated that appellant had been visiting physicians at the time they worked together, but that appellant had been frustrated by the lack of a definitive diagnosis.

In a letter dated January 3, 2013, Julia King stated that appellant had told her about two bites that concerned her while working at Hart Mountain National Antelope Refuge. She noted that appellant's condition had deteriorated over the year and that appellant had previously been treated for other illnesses.

By decision dated April 18, 2013, OWCP issued a *de novo* decision denying compensation, superseding its earlier March 26, 2013 decision. It found that there was no evidence to support a finding that her claim was timely filed within three years of the date of injury or that her immediate supervisor had actual knowledge within 30 days of the date of injury. OWCP found that the date of appellant's injury was June 26, 2006 and that her claim for compensation was not filed until January 31, 2013.

In a statement dated May 19, 2013, appellant noted that she had filed a claim for Lyme disease, contracted in the course of living in government quarters and working on a national wildlife refuge. She explained that she had not told her supervisor of any tick bites because it was a routine experience and that employees did not report tick bites because they occurred so frequently and were expected.

In a report dated June 19, 2013, Dr. Penney Stringer, a Board-certified family physician, stated that appellant had tested positive for Lyme disease by diagnostic testing taken in October 2012. She expressed her opinion that appellant had a greater than 50 percent chance of

having Lyme disease due to her symptoms and diagnostic testing and a greater than 50 percent chance of having contracted this illness at work.

On August 11, 2013 appellant requested reconsideration of her claim. She noted that she had no immediate supervisor from mid-2006 to mid-2007 to whom she could have reported a tick bite or illness; she did not know she had been bitten by a tick species that could pass on Lyme disease; and tick bites were expected and not always reported in her position. Appellant stated that her Lyme disease went undiagnosed until 2012 and, therefore, she could not have reported it within three years of having been bitten by a tick. She argued that she could not have filed a timely claim for an unknown illness before her Lyme disease diagnosis, because she would not have known if it was caused by her work environment.

By decision dated September 12, 2013, OWCP affirmed its prior decision and evaluated the merits of appellant's claim. It stated that she had submitted duplicate evidence other than the statement of Mr. Reynolds, which it found insufficient to support that her claim was timely filed. OWCP noted that appellant's own statements supported her reasons for not reporting the incident, but found them insufficient to establish a timely filing.

### **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 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> For actual knowledge of a supervisor to be regarded as timely filed, an employee must show not

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<sup>3</sup> *Charles Walker*, 55 ECAB 238, 239 (2004); *see Charles W. Bishop*, 6 ECAB 571, 571 (1954).

<sup>4</sup> 5 U.S.C. § 8122(a).

<sup>5</sup> *Id.* at § 8119; *Larry E. Young*, 52 ECAB 264, 266 (2001).

<sup>6</sup> *Laura L. Harrison*, 52 ECAB 515, 517 (2001).

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.<sup>7</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 injury.<sup>8</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>9</sup> Section 8122(b) of FECA 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established that her traumatic injury claim was filed.

On January 31, 2013 appellant filed a traumatic injury claim alleging that on June 26, 2006 she was injured by a tick bite, resulting in Lyme disease. The time period for her giving notice of injury and filing for compensation began to run at the time of the claimed incident on June 26, 2006.<sup>11</sup> Appellant did not file her claim for a work injury until January 31, 2013. Therefore, her claim for this injury was not filed within the three-year time limitation.<sup>12</sup>

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 supervisor within 30 days of the claimed injury as specified in section 8119. She has not satisfied either of these provisions. Appellant submitted statements from coworkers, who asserted that she had shown them or told them about insect bites and symptoms that she sustained during her federal employment. As these statements are from coworkers and not from supervisors, they are not probative on the issue of whether her immediate supervisor had actual knowledge or written notice of the claimed injury within 30 days.

Appellant also submitted two statements from supervisors. In a statement submitted with her original claim form, Ms. McDonald noted that she was not appellant's supervisor on the date

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<sup>7</sup> *Delmont L. Thompson*, 51 ECAB 155, 156 (1999).

<sup>8</sup> *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

<sup>9</sup> *Supra* note 7.

<sup>10</sup> 5 U.S.C. § 8122(b).

<sup>11</sup> See *supra* notes 7 and 8.

<sup>12</sup> The Board notes that appellant's claim was properly analyzed as a traumatic injury, defined by OWCP regulations as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. See 20 C.F.R. § 10.5(ee); see also *Laura Swilley*, Docket No. 93-1769 (issued November 16, 1994) (finding that an insect bite resulting in Lyme disease was a traumatic injury).

of injury, but that appellant had reported her claimed injury on January 7, 2013. Mr. Bundy, appellant's supervisor from April 2007 through August 2009, stated that he was not aware of any tick bites, but that the possibility was present and that it was entirely possible that her recent problems stemmed from a tick bite resulting in Lyme disease. As neither supervisors worked with appellant during the relevant time period, *i.e.*, on June 26, 2006 and for 30 days afterward, their statements are not probative on the issue of whether her immediate supervisor had actual knowledge or written notice of the claimed injury within 30 days of injury. Moreover, Mr. Bundy specifically stated that he was unaware of any tick bites. For these reasons, the Board finds that appellant has not submitted sufficient evidence to satisfy the strictures of section 8122 and, thus, her claim for a June 26, 2006 injury was not timely filed.

Section 8122(b) of FECA 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.<sup>13</sup> The Board finds that appellant's condition was not latent, as she made a contemporary record of her symptoms in a work journal and submitted statements from coworkers regarding insect bites on June 26, 2006. Appellant's recording of her symptoms in a work-related document and her displaying of insect bites to coworkers tends to show either that she believed her injury was work related or that she could have become aware of the connection through the exercise of reasonable diligence. Therefore, the time limitation for giving notice of injury and filing for compensation began to run on the date of the tick bite, June 26, 2006.

On appeal, appellant argued that she was not notified by her employing establishment that she could file a claim for Lyme disease. The Board has held that an employee's unawareness of possible entitlement, lack of access to information or ignorance of the law or one's rights and obligations under the law is not an exceptional circumstance that excuse a failure to file a timely claim.<sup>14</sup> In her August 11, 2013 request for reconsideration, appellant asserted that she did not have an immediate supervisor at the time of injury to whom she could have reported a claim. She did not support this assertion with relevant evidence.

### **CONCLUSION**

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

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<sup>13</sup> 5 U.S.C. § 8122(b).

<sup>14</sup> *B.J.*, 59 ECAB 660, 664 (2008).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 19, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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