



## **FACTUAL HISTORY**

On July 11, 2013 appellant, then a 50-year-old postal service agent, filed an occupational disease claim alleging that he developed schizophrenia and a personality disorder as a result of remembering what caused his poor job performance. He noted that he also experienced hallucinations and heard voices. Appellant indicated that he first became aware of his condition and realized it resulted from his employment on December 1, 1988. He explained that he did not file his claim within 30 days because he was unaware and only received social security supplemental payments.

On the claim form, the employing establishment reported that appellant notified them of his condition on July 15, 2013. It further noted that appellant was terminated from employment after a 90-day probation and his last day in pay status was January 25, 1989. The employing establishment submitted a personnel form which indicated that appellant's last day in pay status for the employing establishment was on January 25, 1989.

In a decision dated July 18, 2013, OWCP denied appellant's claim finding that it was not filed in a timely manner. It was found that appellant was aware of his condition and the relationship between his condition and employment on December 1, 1988, but he did not file his occupational disease claim until July 11, 2013.

In an appeal request form dated July 26, 2013 and received on July 30, 2013, appellant requested reconsideration. He noted that supporting evidence was not sent by the employing establishment with his original occupational disease claim.

In an undated statement, appellant requested that the employing establishment reinstate his employment following his release from the hospital. He reported that he was initially hired under career conditional status and on February 8, 1989 was released from employment due to the fact that he did not reach a certain performance level. Appellant explained that following his release he went to a family practitioner for complaints of certain abnormalities that he believed caused him not being able to maintain the necessary performance level at work. He was admitted to the hospital and diagnosed with paranoid schizophrenia.

In a February 1, 1989 hospital record, Dr. John Earle, a Board-certified family practitioner, related appellant's complaints of trouble with concentration and his history of depersonalization detachment, poor job performance and feelings of paranoia. He observed that appellant's speech was slow and deliberate with occasional rumination on paranoid thoughts. Appellant denied any hallucinations and delusions. Dr. Earle provided findings on physical examination. He reported that appellant had a thought disorder with paranoid features and possible paranoid schizophrenia. Appellant also submitted a January 31, 1989 hospital admission record and a February 1, 1989 head computerized tomography (CT) scan which demonstrated no lesions.

In letters dated February 2, 1989, appellant informed the personnel department of the employing establishment that he was admitted to the hospital on January 31, 1989 and was unsure of how long he would be in the hospital. He requested reinstatement on a successful completion of the road test after being discharged from the hospital.

In an April 7, 1989 letter, the employing establishment denied appellant's request for reinstatement. It stated that after reviewing his medical documents it was unable to clear appellant for employment in his current medical prognosis and condition.

Appellant also submitted a decision and order from the Social Security Administration dated October 5, 2011 regarding his application for supplemental security income benefits due to his mental disability. He submitted various social security administration forms regarding his application for disability benefits for his diagnosed depression and schizophrenia conditions.

By decision dated October 28, 2013, OWCP denied modification of the July 18, 2013 decision finding that appellant had not filed a timely claim for compensation. It determined that the evidence failed to establish that appellant filed his claim within 3 years of the date of injury or that his immediate supervisor had actual knowledge within 30 days of the date of injury.

In a letter dated November 13, 2013 and received on November 18, 2013, appellant submitted a request for reconsideration. He pointed out that the employing establishment or its internal claims insurance company paid his hospitalization treatment for paranoid schizophrenia. Appellant stated that, although his hospitalization was reimbursed, he had not received any rehabilitation or compensation for this unexpected hospitalization. He alleged that OWCP denied his claim because the employing establishment neglected to report his illness to OWCP. Appellant further contended that the employing establishment had acted neglectfully against someone who was mentally ill.

In a decision dated December 11, 2013, OWCP denied appellant's request for reconsideration finding that the evidence submitted did not meet any of the requirements sufficient to warrant merit review under 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

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 supervisor 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>

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

<sup>4</sup> 5 U.S.C. § 8122(a).

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. For actual knowledge of a supervisor to be regarded as timely filed, an employee must show not only that the immediate supervisor knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.<sup>6</sup>

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. 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>7</sup>

In cases of occupational disease, the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware of a possible relationship between his condition and his employment. When an employee becomes aware or reasonably should have been aware that he or she has a condition which has been adversely affected by factors of his or her federal employment, such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent. Where the employee continues in the same employment after he reasonably should have been aware that he has a condition which has been adversely affected by factors of federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.<sup>8</sup> The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

Appellant alleges that he developed schizophrenia and a personality disorder as a result of his employment. OWCP denied his occupational disease claim as untimely. The Board agrees that appellant did not file his claim within the applicable time limitation provisions of FECA.

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

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

<sup>7</sup> 5 U.S.C. § 8122(b); *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>8</sup> *Larry E. Young*, *supra* note 5.

<sup>9</sup> *Debra Young Bruce*, 52 ECAB 315 (2001).

When appellant filed his claim for an employment-related condition on July 11, 2013, he indicated that he was first aware of his condition and its relationship to his employment on December 1, 1988. Accordingly, he indicated that on December 1, 1988 he was aware or reasonably should have been aware of a possible relationship between his mental condition and factors of his federal employment. The Board finds that the date appellant placed on his claim for compensation, December 1, 1988, is probative evidence as the date he first became aware that his condition was related to his federal employment.<sup>10</sup>

As noted above, however, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the date of the last exposure. Therefore, the time for filing appellant's claim did not begin to run until January 25, 1989, the date he was terminated from employment. Accordingly, the three-year statute of limitations would have expired no later than January 25, 1992. The Board finds that because appellant did not file his claim until July 11, 2013 his occupational disease claim remains barred by the statute of limitations.

Appellant's claim would still be regarded as timely under FECA if his immediate supervisor had actual knowledge of his injury within 30 days or if written notice of injury was given to his immediate supervisor within 30 days as specified in section 8119. Although there is evidence that appellant notified the employing establishment via letters dated February 2, 1989 and February 1, 1989 that he was hospitalized, the Board finds that this is insufficient to establish that his supervisor had actual knowledge of any on-the-job injury within 30 days. Even if the employing establishment knew that appellant suffered from a medical condition during his employment, appellant also has to show that his supervisors knew or reasonably should have known that this condition was caused by his employment.<sup>11</sup> In this case, the February 2, 1989 letter and February 1, 1989 medical report is insufficient to establish that his superior had constructive knowledge sufficient to be reasonably put on notice that appellant's medical condition was work related within 30 days of January 25, 1989, the day he was terminated from employment. Accordingly, appellant's claim, which is outside the three-year time limitation period, is untimely.

On appeal, appellant asserts that the original employing establishment did not include the record of evidence of all the reported facts and documentation of his claim. As noted above, however, it is the claimant's burden to file a claim within three years and not that of the employing establishment.<sup>12</sup> Appellant did not establish that he filed his claim within three years of his last date of employment with the employing establishment, nor has he established that his supervisor had actual knowledge of his allegations that his emotional condition was work related within 30 days of the date of injury. Therefore, the Board finds that his claim was not timely filed within the three-year time limitation under section 8122 of FECA.

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<sup>10</sup> See *J.S.*, Docket No. 13-252 (issued March 27, 2013).

<sup>11</sup> See *A.T.*, Docket No. 13-611 (issued March 5, 2014); *David R. Morey*, 55 ECAB 642 (2004).

<sup>12</sup> *Supra* note 9.

## LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation.<sup>13</sup> OWCP's regulations provide that OWCP may review an award for or against compensation at any time on its own motion or upon application. The employee shall exercise his or her right through a request to the district office.<sup>14</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>15</sup>

A request for reconsideration must also be submitted within one year of the date of the OWCP decision for which review is sought.<sup>16</sup> A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or provided an argument that meets at least one of the requirements for reconsideration. If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>17</sup> If the request is timely but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>18</sup>

## ANALYSIS -- ISSUE 2

Following the October 28, 2013 decision denying his claim, appellant submitted a request for reconsideration that was received by OWCP on November 18, 2013. He reported that the employing establishment or its internal claims insurance company paid his hospitalization treatment for paranoid schizophrenia. No additional evidence was received. The Board finds that appellant did not submit any evidence sufficient to require reopening of his case for merit review.

Appellant did not submit any evidence along with his request for reconsideration to show that OWCP erroneously applied or interpreted a specific point of law, or did he advance a relevant legal argument not previously considered by OWCP. Because he did not meet any of the necessary requirements, he is not entitled to further merit review. Appellant's allegation that

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<sup>13</sup> 5 U.S.C. § 8128(a); *see also D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>14</sup> 20 C.F.R. § 10.605; *see also R.B.*, Docket No. 09-1241 (issued January 4, 2010); *A.L.*, Docket No. 08-1730 (issued March 16, 2009).

<sup>15</sup> 20 C.F.R. § 10.606(b); *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>16</sup> *Id.* at § 10.607(a).

<sup>17</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>18</sup> *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

his hospitalization was paid for does not establish that he filed a timely claim for compensation or that his supervisor had notice of a work-related medical condition.

The Board finds that appellant failed to submit relevant and pertinent new evidence, a relevant legal argument not previously considered by OWCP or evidence or argument which shows that OWCP erroneously applied or interpreted a specific point of law. Therefore, OWCP properly refused to reopen his case for further consideration of the merits of his claim under 5 U.S.C. § 8128.

**CONCLUSION**

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA. The Board also finds that OWCP properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 11 and October 28, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 6, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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