

reconsideration of a July 3, 2000 OWCP decision. The case was remanded for further review of the merits.² The Board's October 15, 2012 decision is incorporated herein by reference.

The record reflects that on June 9, 1997 appellant, then a 48-year-old former federal correctional officer, filed a traumatic injury claim for an emotional condition as a result of a hostage incident at work on February 18, 1978.³ He stated that he stopped work and returned to duty on February 22, 1978. In an attached statement, appellant alleged that the hostage situation resulted in post-traumatic stress and he was never psychologically examined or found fit to return to duty. He was given three days off before returning to work. Appellant stated that he was never asked to complete any forms, safety reports, or workers' compensation forms or medical forms pertaining to the incident. He stated that he was traumatized and incapable emotionally of remembering to complete claim forms. Appellant explained that, after the hostage incident, he continued to work at the same facility for five more years. After he resigned from federal service, he worked for a private security company until terminated for post-traumatic stress disorder. Appellant stated that he had no similar condition due to the hostage trauma except for his combat experience in the military.⁴

The employing establishment's portion of appellant's claim form was completed by Sandra Sullivan, a safety manager. Ms. Sullivan listed the date of injury as "February 8, 1978," noting appellant stopped work on February 9 and returned to work on February 12, 1978. She also listed that appellant had received medical care on "February 8, 1978." In a September 10, 1997 memorandum, Ms. Sullivan noted that she had received appellant's claim, plus supporting documentation such as medical reports and those by the employing establishment pertaining to the February 18, 1978 incident. Because of the time factor, she did not know how to approach the matter as appellant's supervisors were not available to complete the form. Ms. Sullivan contacted OWCP and was told to complete and sign the supervisory side of the CA-1 form.⁵

Appellant submitted documents pertaining to claims with the Department of Veterans Affairs, an application for disability retirement with the Social Security Administration and medical records from the Veterans' Health Administration.

² Docket No. 12-1019 (issued October 15, 2012).

³ The record reveals that on June 9, 1997 appellant also filed an occupational disease claim alleging that he sustained mental trauma, diagnosed phobia, and post-traumatic stress as a result of a prison riot and from his service in Vietnam. He first became aware of his alleged conditions on February 21, 1978, and that it was related to his employment on October 18, 1994. Since appellant alleged that his emotional condition resulted from a single, February 18, 1978 employment incident and not over a period longer than a single workday or shift, it was properly adjudicated as a claim for traumatic injury. *See* 20 C.F.R. § 10.5(q) & (ee).

⁴ The record reflects that appellant entered duty with the Bureau of Prisons on November 15, 1974. Prior to his employment, he served in the military and saw duty in Vietnam. Appellant filed claims with the Veterans Administration for post-traumatic stress and exposure to Agent Orange which appear to have been denied.

⁵ The record reflects that Ms. Sullivan was a correctional officer and coworker of appellant as of February 18, 1978. She completed a statement pertaining to her inspection of cell block D following the hostage incident.

The record contains numerous memoranda completed by personnel of the employing establishment contemporaneous to the hostage situation. At approximately 8:00 p.m. on Saturday, February 18, 1978 several inmates took hold of appellant and another correctional officer in the D cellblock. The officers were bound and gagged. The warden and other supervisory personnel were soon notified of the situation and off-duty personnel were contacted and placed on standby. Negotiations between the prison staff and inmates commenced approximately 9:00 p.m. and various demands were made. At 2:12 a.m., on the morning of February 19, 1978 appellant and his fellow officer were released. Appellant was subsequently interviewed in the captain's office.

On February 21, 1978 appellant submitted a statement to E.E. Bradford, the chief correctional supervisor. He outlined how he was taken hostage in the cell block by two inmates at 8:00 p.m. with a homemade knife. Appellant was tied up, arms behind his back and his legs, with a ball of cloth put into his mouth. He was taken to a supply closet. During the period appellant was tied up, an inmate touched a homemade knife to his neck on several occasions in an assaultive manner. At about 8:40 p.m. his fellow officer was restrained by other inmates. At 9:00 p.m. appellant was untied and then taken to the first tier and told to sit in a chair and his mouthpiece was removed. The inmates negotiated for the next several hours and, by 12:25 a.m., sought to achieve amnesty from the prison administration. Appellant and his fellow officer tried to convince the inmates to give up before the situation became worse. He noted that several inmates stated that they wanted to cut off his ears or legs and throw them outside. By 2:00 a.m., the inmates knew they were not leaving the prison as demanded. Appellant and his fellow officer were released: "I departed at 2:10 a.m. and waited for Mr. Murrell around the door of Dorm #10. Mr. Murrell was released and was walking with inmate Kott, D Block resident. From there we met Captain Bradford and Associate Warden Johnson. Kott was returned to the cell house."⁶

By letter dated June 30, 1997, appellant was requested to provide further information regarding his claim, including an explanation as to why he waited so many years to file the claim.

On June 30, 1997 OWCP also requested that the employing establishment provide further information regarding the date appellant stopped work at the employing establishment, and copies of any records pertaining to the February 18, 1978 incident, including medical records.

Personnel records were received which reflect that appellant continued to work at the employing establishment. On January 22, 1980 the warden congratulated appellant on five years of service as of November 1979. On January 20, 1981 appellant was promoted to senior officer specialist by the acting warden. In August 1981, the Federal Bureau of Investigation approached the warden about preparing a hostage survival training program for correctional officers, requesting the assistance of appellant and his fellow officer. The warden noted that both men agreed to assist in the training program, which was videotaped on August 24, 1981 at the UCLA hospital. Both men were subsequently commended by the FBI for their "articulate and professional appearance" in the program. On April 14, 1982 appellant requested a new

⁶ By memorandum dated June 8, 1978, appellant was commended by the warden for the professional manner in which he behaved during the hostage crisis.

assignment to the morning watch shift as he was attending junior college summer session and sought to complete his major. Later that month, he requested additional leave in order to visit relatives in Hawaii. On October 13, 1981 appellant made a claim for benefits to the VA, noting that an additional request for a shift change at work was denied as the facility was undermanned. He stated that he was trying to develop and upgrade his education, which was difficult due to the manpower needs of his employer. On December 19, 1983 appellant submitted a letter of resignation to the employing establishment, effective January 4, 1984. He stated that his resignation was in order to complete his education and other business interests. On or about December 30, 1983 appellant sustained a contusion to his left knee. He filed a claim which was accepted by OWCP.⁷

Appellant responded to OWCP's request for further information on July 18, 1997. He co-signed a statement prepared by his brother. Appellant stated that he almost lost his life after fighting with the inmates with knives and was emotionally incapable after the hostage incident of completing any claim forms. He characterized the trauma as long-term and numbing, alleging harassment by both inmates and staff after his return to duty. Appellant stated that his supervisor had the responsibility for timely completing all necessary forms, which he failed to do. He spoke with a physician identified as Dr. Johnson, after the hostage incident, who only asked if he was okay. Appellant stated that the physician did not conduct an examination but told him to take several days off. He noted that he filed a workers' compensation claim for a leg injury on December 30, 1983, which was denied. Appellant stated that he resigned from the employing establishment in 1983 due to stress, following which he began to receive medical attention for nervousness and depression at the VA due to trauma in Vietnam; but not treated for the hostage trauma, for which the VA would not take responsibility. He obtained employment in the private sector in a security position but had recently been terminated for symptoms of post-traumatic stress disorder. Appellant stated that it took 19 years for him to crack up.

In a decision dated August 4, 1997, OWCP denied appellant's emotional condition claim. It determined that the June 9, 1997 claim was untimely filed and that he did not meet any requirements for waiver of the time limitation.

Appellant requested a hearing before an OWCP hearing representative which was held on August 2, 1998. At the hearing, he stated that he had worked with Ms. Sullivan at Terminal Island and she subsequently assisted him with his compensation claim "only by submitting the information to the Department of Labor."

By decision dated December 22, 1998, the hearing representative found that appellant's claim for compensation was not timely filed and affirmed the August 4, 1997 decision. Following the August 2, 1998 hearing, he inquired with the employing establishment as to Ms. Sullivan's notation on the claim form that appellant received medical care on February 8, 1978. The hearing representative was informed that the employing establishment had no medical records for claimant and was subsequently advised by OPM that appellant did not have an archived medical folder. He found that appellant's claim was traumatic in origin and he did not timely file a claim for compensation within three years of the alleged traumatic

⁷ In a May 10, 1984 decision, OWCP noted it had accepted the claim but denied continuation of pay from December 31 to January 5, 1984 as his claim for compensation was not filed within 30 days of injury.

incident of February 18, 1978. None of the memoranda surrounding the incident at work mentioned any injury sustained by appellant on or after February 18, 1978 and there were no medical records of the employer pertaining to any treatment within 30 days of the incident. Further, there was no evidence that his immediate supervisor had actual knowledge of an injury within 30 days. As to appellant's contention that he was mentally incompetent from the date of injury to file a claim, the hearing representative found that the medical evidence of record did not support his contention. He noted that appellant continued to work at the employing establishment for five years before he resigned to pursue his education and other business opportunities. The record did not support that appellant was incapable of filling out a claim form to satisfy the time limitation requirement within three years after February 18, 1978.

Appellant subsequently submitted additional requests for reconsideration. In decisions dated April 22, 1999 and July 3, 2000, OWCP denied modification of the August 4, 1997 decision.

In a letter dated August 15, 2000, appellant informed OWCP that he waived his right to the 90-day review in order to submit new evidence for review within the one-year time limitation according to 20 C.F.R. § 10.607(a). He submitted an August 10, 2000 report by Dr. Thomas Grieder, a psychiatrist with the Department of Veterans Affairs. By letter dated August 27, 2002, appellant submitted additional reports from the Veterans Administration concerning his treatment for post-traumatic stress disorder and other mental conditions.

The record was dormant until August 12, 2011 when appellant submitted a request for reconsideration and various medical reports. By decision dated November 18, 2011, OWCP denied his request for reconsideration finding that it was not timely filed and failed to present clear evidence of error. Appellant filed an appeal before the Board which, as noted, remanded the case for a review of the merits of the claim.

Following the Board's October 15, 2012 decision, OWCP issued a February 14, 2013 decision. It found that the evidence failed to establish that appellant's June 9, 1997 traumatic injury claim was timely filed or that he met any of the requirements for waiver of the three-year time limitation. By decision dated January 7, 2014, OWCP reissued the February 14, 2013 decision as it was returned as undeliverable.

LEGAL PRECEDENT

Section 8122(a) of FECA provides that in cases of injury on or after September 7, 1974 a claimant has three years to file a claim for compensation.⁸ 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

⁸ 5 U.S.C. § 8122(a).

(2) Written notice of injury or death as specified in section 8119 was given within 30 days.⁹

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.¹⁰ 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.¹¹

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.¹² 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.¹³

ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that his claim of traumatic injury on February 18, 1978 was timely filed.

The record establishes that appellant, then a correctional officer, was taken hostage while at work on February 18, 1978 with a fellow officer. They were released in the early morning of February 19, 1978. Some 19 years later, on June 9, 1997, appellant filed a traumatic injury claim alleging that on February 18, 1978 he sustained mental trauma with post-traumatic stress as a result of the hostage incident at work. Section 8122(a) provides that an original claim for compensation for disability must be filed within three years after the injury or death.

Appellant's alleged injury involved a traumatic incident of which he was immediately aware, even though all the sequelae of the injury may not have been known to him until later. As noted in *Paul S. Devlin*,¹⁴ the time for giving notice of injury and for filing a claim of compensation began to run at the time of the traumatic incident, despite the claim that the

⁹ *Id.*

¹⁰ *Id.* at § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

¹¹ *Laura L. Harrison*, 52 ECAB 515 (2001).

¹² *Emma L. Brooks*, 37 ECAB 407 (1986).

¹³ *Delmont L. Thompson*, 51 ECAB 155 (1999).

¹⁴ 39 ECAB 715 (1988)

employee was not aware of the seriousness or the ultimate consequences of the injury, or that the nature of the injury was not diagnosed until sometime later. The Board finds that appellant's claim for a traumatic injury on February 18, 1978 was not filed within the requisite three-year time limitation period. Therefore, his claim is barred by the applicable time limitation provisions of FECA.

Appellant's claim would still be regarded as timely under section 8122(a)(1) if his 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. The Board finds that the evidence of record does not support that appellant's immediate supervisor had actual knowledge of the injury within 30 days.

Before OWCP and on appeal, appellant contends that the memoranda written by various officials at the prison addressing the February 18, 1978 hostage incident manifest actual knowledge by his immediate supervisor of injury within 30 days. The Board has carefully reviewed the memoranda completed within 30 days of the hostage episode, including that of appellant, and note that they provide chronological descriptions of the incident. While they reflect that his supervisors were well aware of the February 18, 1978 incident, they do not establish that appellant's supervisors had actual knowledge of any employment-related injury claimed by appellant resulting from this incident within 30 days.

Ms. Sullivan, who submitted the June 9, 1997 traumatic injury claim form on the advice of OWCP, noted that appellant's immediate supervisors were unavailable to complete the form as 19 years had passed. The evidence contemporaneous to the hostage incident in 1978 reflects that Ms. Sullivan was appellant's coworker, also serving as a correctional officer at Terminal Island. The memoranda completed by the various prison officials involved in the hostage incident do not reflect that appellant claimed an injury, either upon his release on February 19, 1978 or within 30 days of the incident. The evidence of record does not establish that appellant informed any immediate supervisor of an injury sustained in the hostage situation. Appellant provided a February 21, 1978 hostage report to Mr. Bradford, the chief correctional supervisor, as to what happened during the evening of February 18, 1978 and early morning of the February 19, 1978. He noted that following his release, he met with Mr. Bradford and the associate warden. Appellant's statement did not allege or specify any injury, physical or emotional, related to the incident. Moreover, he did not provide written notice of injury within 30 days. As Mr. Bradford, appellant's immediate supervisor, did not have actual knowledge of an injury within 30 days, the three-year time limitation provision can be excused only if appellant was mentally incompetent or there were exceptional circumstances which prevented him from filing a claim.

In 1997 when appellant filed his claim, he contended that following the February 18, 1978 hostage incident he was traumatized and emotionally incapable of completing the necessary traumatic forms or paperwork. The Board finds, however, that the evidence contemporaneous to the hostage incident and thereafter does not support that appellant was mentally incompetent from filing a timely claim within three years.

The evidence reflects that appellant last worked for the employing establishment on January 4, 1984, when his resignation became effective. Prior to that time, he continued work at

the employing establishment. Appellant provided inconsistent statements regarding the immediate aftermath of the hostage situation. He stated in 1997 with the submission of his claim form that he was emotionally incapacitated but was never examined after the incident; but also stated that a physician identified as a Dr. Johnson had asked if he was okay. The Board notes that there is no medical evidence of record from the employer pertaining to any treatment of appellant following the February 18, 1978 incident or of any treatment report by a Dr. Johnson. The record reflects that Ms. Sullivan listed on the claim form in 1997 that appellant received medical care on "February 8, 1978." The Board notes that the February 8, 1978 date as listed by Ms. Sullivan was prior to the hostage incident claimed in this case. As discussed, Ms. Sullivan was not appellant's immediate supervisor or had knowledge of the circumstances surrounding the hostage incident. Moreover, the hearing representative made further inquiry on this aspect of the claim in 1998 by contact with the employing establishment and OPM. He was informed that the employing establishment had no medical records for appellant nor did the OPM have any medical folder. There is no medical evidence that appellant obtained treatment at the employing establishment following the hostage incident or was ever found disabled for work.

The record contemporaneous to appellant's continued employment with the Bureau of Prisons does not reflect an individual incapacitated by emotional stress. No claim was filed by appellant within three years of the hostage incident. He continued to work in his career as a correctional officer, receiving a promotion in January 1981 to the position of senior officer specialist. In August 1981, appellant was approached by the FBI to participate in a hostage survival training program for correctional officers. He and his fellow officer agreed to assist in the training program, which was videotaped on August 24, 1981 at the UCLA hospital. Both men were commended by the FBI for their articulate and professional appearance in the program. On October 13, 1981 appellant made a claim for benefits to the VA, noting that his additional request for a shift change was denied as the facility was undermanned. He stated that he was trying to develop and upgrade his education, which was difficult due to the manpower needs of his employer. On April 14, 1982 appellant requested a new assignment to the morning watch shift as he was attending junior college summer session and sought to complete his major. Later that month, he requested leave in order to visit relatives in Hawaii. On December 19, 1983 appellant submitted a letter of resignation to the employing establishment, effective January 4, 1984. He stated that his resignation was in order to complete his education and other business interests. On December 30, 1983 appellant sustained a contusion to his left knee. He completed a claim form related to this injury, which was accepted by OWCP. Based on this evidence, the Board finds that appellant has failed to meet his burden of proof to establish that he was mentally incompetent to file a timely claim related to the February 18, 1978 hostage incident at work.

Further, appellant has not established any tolling of the time limitation provision of the statute due to exceptional circumstances. 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 the law do not constitute exceptional circumstances that would excuse a failure to timely file a claim.¹⁵ Based on the evidence of record, the Board finds that appellant failed to file a timely claim for compensation. His immediate supervisor, Mr. Bradford, did not have

¹⁵ See *C.W.*, Docket No. 14-925 (issued July 18, 2014); *Roger W. Robinson*, 54 ECAB 846 (2002).

actual or imputed knowledge of the claimed injury within 30 days of the February 18, 1978 incident, nor has appellant established that he was mentally incompetent or that exceptional circumstances tolled the three-year statute of limitations.

CONCLUSION

The Board finds that appellant's 1997 claim for an emotional condition was not timely filed within three years of the February 18, 1978 hostage incident at work.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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