



weighing approximately 80 pounds, when he turned and twisted and injured his lower back at work. He indicated that he was diagnosed with spinal stenosis. The employing establishment indicated that appellant stopped working on January 13, 1993 and returned on January 19, 1993.<sup>2</sup> Dr. Wayne Wilson, a major with the employing establishment checked the box “yes” in response to whether appellant was injured in the performance of duty.

By letter dated December 18, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It informed him of the type of evidence needed to support his claim. OWCP advised appellant that the evidence was not sufficient to show that he timely filed his claim. It requested that he submit such evidence within 30 days.

In a January 27, 2014 decision, OWCP denied appellant’s claim on the grounds that it was not timely filed. It found no evidence that the claim had been filed within three years of the injury date or that his immediate supervisor had actual knowledge of his injury within 30 days of the injury date.

On February 8, 2014 appellant requested a telephonic hearing. He subsequently requested that the format of the hearing be changed to a review of the written record.

In a letter dated April 21, 2014, appellant noted that he had sent the required documentation. He explained that he was never briefed at his retirement and he did not know he had a limited time to apply for disability. Appellant noted that he was retired and never knew that OWCP existed or where to apply until he made numerous inquiries. OWCP also received diagnostic test reports that included a March 23, 2005 x-ray of the lumbar spine and a March 26, 2014 magnetic resonance imaging (MRI) scan of the lumbar spine.

In an October 17, 2014 decision, an OWCP hearing representative affirmed the January 27, 2014 decision. She found no evidence that the claim had been filed within three years of the injury date. The hearing representative further noted that appellant’s contention that he did not know of the time limit was not a valid reason to waive the time requirement.

### **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.<sup>4</sup> Compensation

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<sup>2</sup> The exact date of appellant’s retirement is not clear.

<sup>3</sup> *C.D.*, 58 ECAB 146 (2006); *David R. Morey*, 55 ECAB 642 (2004); *Mitchell Murray*, 53 ECAB 601 (2002).

<sup>4</sup> *W.L.*, 59 ECAB 362 (2008); *Gerald A. Preston*, 57 ECAB 270 (2005); *Laura L. Harrison*, 52 ECAB 515 (2001).

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>5</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 supervisor or 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 person giving the notice.<sup>6</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>7</sup> For actual knowledge of a supervisor to be regarded as timely filed, 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.<sup>8</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>9</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>10</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>11</sup>

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<sup>5</sup> 5 U.S.C. § 8122(a). See *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *J.P.*, 59 ECAB 178 (2007); *Cory W. Davis*, 57 ECAB 674 (2006).

<sup>6</sup> 5 U.S.C. § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

<sup>7</sup> *Laura L. Harrison*, *supra* note 4.

<sup>8</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>9</sup> *Emma L. Brooks*, 37 ECAB 407 (1986).

<sup>10</sup> *Supra* note 8.

<sup>11</sup> 5 U.S.C. § 8122(b).

## ANALYSIS

The Board finds that appellant's traumatic injury claim is barred by the applicable time limitation provisions of FECA. On December 6, 2013 appellant filed a traumatic injury claim alleging that he sustained an injury on January 13, 1993, in the performance of duty.

Section 8122 provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>12</sup> Appellant did not file a claim for the alleged January 13, 1993 injury until December 6, 2013, more than 20 years after the alleged incident giving rise to the claimed injury. Therefore, his claim was filed outside the three-year time limitation period which ended on January 13, 1996.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior or another employing establishment official had actual knowledge of the injury within 30 days of the date of injury or under section 8122(a)(2) if written notice of injury was given within 30 days.<sup>13</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>14</sup> There is no supporting evidence in the record that appellant's immediate superior or another employing establishment official had actual or written knowledge of the alleged January 13, 1993 injury within 30 days. The Board notes that there is no evidence from an immediate supervisor indicating actual or written knowledge. While the claim form contains an annotation from Dr. Wilson of the employing establishment, who checked the box "yes" in response to whether appellant was injured in the performance of duty, he does not indicate that he was appellant's immediate superior in 1993 or that he was aware of the January 13, 1993 injury within 30 days of the injury.

The Board finds that appellant has not established that his supervisors had actual knowledge of a work-related condition within 30 days. The exceptions to the statute have not been met and, thus, appellant has failed to establish that he filed a timely claim. Consequently, he has not met his burden of proof as he has not established that he filed a timely notice of traumatic injury and claim for compensation under the applicable time limitation provisions of FECA.

On appeal, appellant argued that Dr. Wilson indicated that he was injured on the job. He argued that the denial of his claim was unfair as he was unaware of a time requirement. Unawareness of possible entitlement, lack of information and ignorance of the law, or of one's rights and obligations under it do not constitute exceptional circumstances that could excuse a failure to file a timely claim.<sup>15</sup>

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<sup>12</sup> *Id.* at § 8122.

<sup>13</sup> *Larry E. Young, supra* note 6. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (March 1993).

<sup>14</sup> *Kathryn A. Bernal*, 38 ECAB 479 (1987).

<sup>15</sup> *Roger W. Robinson*, 54 ECAB 846 (2003).

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 failed to file a claim for compensation within the applicable time limitation provisions of FECA.

**ORDER**

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

Issued: April 3, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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

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