

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

C.E., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Warner Robins, GA, Employer)

**Docket No. 15-16
Issued: February 6, 2015**

Appearances:
L.Z. Dozier, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 2, 2014 appellant, through his attorney, filed a timely appeal from the April 9, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 OWCP properly denied appellant's claim for a December 16, 2008 work injury as untimely filed.

FACTUAL HISTORY

On June 19, 2013 appellant, then a 33-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained injury to his back and right leg at work on December 16, 2008. Regarding the cause of the claimed injury, he stated, "I was stepping out of

¹ 5 U.S.C. §§ 8101-8193.

my postal truck with a parcel when my right knee buckled and a sharp pain shot up my back.” Appellant did not stop work at the time of the claimed December 16, 2008 injury. On the same form, Willie Finney, a supervisor, noted, “Employee stated he reported this on December 16, 2008. There is no record of this ever being reported.” Mr. Finney indicated that the employing establishment was challenging appellant’s claim and stated, “This incident was never reported and he earlier states that he was also injured off the job.”

In a June 19, 2013 letter to OWCP, an official for the employing establishment challenged appellant’s claim for a December 16, 2008 work injury as untimely filed, noting that he did not inform anyone at the employing establishment that he was claiming a December 16, 2008 work injury until he filed his Form CA-1 on June 19, 2013. The official discussed a workers’ compensation claim appellant had previously filed in connection with a May 9, 2008 vehicular accident at work. The official noted that the claim regarding a May 9, 2008 accident eventually led to a third-party action being filed and suggested that appellant filed his Form CA-1 on June 19, 2013 as part of his counsel’s strategy in the third-party action.²

In a June 27, 2013 letter, OWCP asked appellant to answer various questions about his claimed December 16, 2008 injury, including whether there were any witnesses to the claimed work incident, whether he reported the claimed injury to a supervisor, and whether he sustained any other injury, either on or off duty, between December 16, 2008 and the date the claimed injury was first reported to his supervisor and to a physician. It requested that he submit documentary evidence in support of his claim for a December 16, 2008 injury. Appellant was provided 30 days to respond, but the record does not establish that he provided any documentary evidence within the allotted time.

In a July 29, 2013 decision, OWCP denied appellant’s claim for a work-related December 16, 2008 injury. Regarding the basis for the denial of the claim, it stated:

“You have established that you are a federal civilian employee who filed a timely claim; however, after a thorough review of all evidence, your claim is denied because the factual component of the third basic element, fact of injury, has not been met.

“Specifically your case is denied because the evidence is not sufficient to establish that the event(s) occurred as you described. The reason for this finding is that you did not respond to any of the questions posed in the development letter, nor did you sign the certification statement confirming everything you claimed was true/correct, and we did not receive the medical evidence necessary to support your claim.”

Appellant requested a hearing before an OWCP hearing representative. At the February 24, 2014 hearing, he testified in response to a question regarding why he delayed in

² The record appears to contain a 2012 document from the third-party action that mentions a work incident on December 16, 2008. The record contains a “PS Form 1769/301 Accident Report” that generally mentions a December 16, 2008 accident, but the document does not indicate when it was produced or who produced it. The unsigned document was added to the record on June 20, 2013.

filing his claim for a December 16, 2008 work injury. Appellant stated, “When I talked to my supervisor and when the incident actually happened she never instructed me that I needed to file a claim for it.... So I wasn’t aware that that was something I was supposed to do.” He noted that on December 16, 2008 he held a package weighing about 20 to 30 pounds and that, when he stepped out of his postal truck, his right knee buckled and the pain shot up his back. Counsel indicated that appellant reported the December 16, 2008 incident to his employer around the time it occurred. He also noted that appellant had filed a claim for a May 2008 vehicular accident at work.

Subsequent to the hearing, appellant submitted medical records in support of his claim. He submitted a report from the date of the claimed injury, *i.e.*, December 16, 2008, which was produced by Dr. K. Scott Malone, an attending Board-certified orthopedic surgeon. The report makes no mention of appellant having sustaining a work injury on December 16, 2008 and indicates that he had no significant changes in his back and leg symptoms. In a March 26, 2014 report, Dr. Malone detailed his treatment of appellant and noted that appellant “returned to my office on December 16, 2008 and reported his pain had flared up.” He stated:

“I have reviewed [appellant’s] records. I have also reviewed a copy of his deposition in which he testified that the flare up of his symptoms on December 16, 2008 occurred when he was stepping out of his postal vehicle with a parcel and his right leg completely buckled and he felt pain shoot up in his leg and back. I have also reviewed a decision by Judge Jason Ashford of the State Court of Houston County in which he found that [appellant] suffered a new work[-]related accident or aggravation on December 16, 2008.”

In an April 9, 2014 decision, an OWCP hearing representative affirmed OWCP’s July 29, 2013 decision denying appellant’s claim for a December 16, 2008 work injury as modified to reflect that the claim was denied on the grounds that it was untimely filed. She found that appellant’s claim was not filed within three years of his claimed December 16, 2008 injury and that he did not submit probative evidence showing that his immediate supervisor had knowledge of the claimed December 16, 2008 injury.

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.³ 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

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

“(2) written notice of injury or death as specified in section 8119 was given within 30 days.”⁴

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.⁵ Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁶

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.⁷ 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.⁸

ANALYSIS

On June 19, 2013 appellant filed a traumatic injury claim (Form CA-1) alleging that he sustained injury to his back and right leg at work on December 16, 2008. Regarding the cause of the claimed injury, he stated, “I was stepping out of my postal truck with a parcel when my right knee buckled and a sharp pain shot up my back.” On the same form, Mr. Finney, appellant’s supervisor, noted that there was no record of appellant reporting a December 16, 2008 injury prior to his June 19, 2013 filing of a Form CA-1. In an April 9, 2014 decision, OWCP denied appellant’s claim for a December 16, 2008 work injury on the grounds that it was untimely filed.

The Board finds that OWCP properly found that appellant did not file a timely claim for an alleged December 16, 2008 work injury. As appellant alleged that he sustained a traumatic injury on December 16, 2008, the time limitation began to run on December 16, 2008 for this claimed injury.⁹ As appellant did not file a claim until June 19, 2013, his claim was not filed within the three-year period of limitation.

Appellant’s claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior had actual knowledge of the claimed December 16, 2008 injury within 30 days, or under section 8122(a)(2) if written notice of injury was given to his immediate superior

⁴ 5 U.S.C. § 8122(a).

⁵ 5 U.S.C. § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

⁶ *Laura L. Harrison*, 52 ECAB 515 (2001).

⁷ *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

⁸ *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁹ *See supra* note 7.

within 30 days as specified in section 8119. Appellant has not satisfied either of these provisions. On appeal, counsel argued that appellant's statements at the February 24, 2014 hearing with an OWCP hearing representative establish that his immediate superior had actual knowledge of his claimed December 16, 2008 injury within 30 days. However, appellant only made vague comments about providing such notice and there is no evidence in the record to support his assertions that his immediate superior had such knowledge. Moreover, the record does not establish that he provided a statement to his immediate superior such that he satisfied the provisions of sections 8119 and 8122(a) of FECA.¹⁰

The record shows that, despite appellant's assertion that he did not know that he needed to file a workers' compensation claim for a work injury, he had previously filed a workers' compensation claim on at least one other occasion, including one for a May 2008 vehicular accident at work. There is no evidence that appellant's immediate superior had actual knowledge of appellant's claimed December 16, 2008 injury prior to receiving the Form CA-1 he filed on June 19, 2013.¹¹

For these reasons, appellant's claim for a December 16, 2008 work injury was untimely filed and OWCP properly denied the claim on this basis.

CONCLUSION

The Board finds that OWCP properly denied appellant's claim for a December 16, 2008 work injury as untimely filed.

¹⁰ See *supra* notes 4 and 5.

¹¹ Appellant submitted medical evidence in which a December 16, 2008 work incident is mentioned. The record also appears to contain a document from a 2012 third-party action that mentions a work incident on December 16, 2008. However, this evidence does not show that appellant's immediate superior had actual knowledge of his claimed December 16, 2008 work injury within 30 days.

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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