



he was a passenger in a car driven by a coworker. He claimed that he suffered from lower back, shoulder, and neck pain for over 25 years and that his pain had worsened over the years.

On the claim form, Natasha Marshall, a supervisor, controverted appellant's claim contending that the claim was not filed within three years of the injury as required by FECA. She stated that the date and time of injury were only "place holders" and did not represent the actual date and time of the alleged injury but were merely based upon information appellant provided. The employing establishment had no records indicating that this injury took place. In a separate statement, Ms. Marshall stated that there were no available records to indicate how long appellant worked at the employing establishment as there was no requirement under the general records schedule to retain employee records after six years.

By letter dated October 23, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence. By letter also dated October 23, 2013, OWCP requested that the employing establishment submit factual evidence regarding appellant's claim.

In a November 20, 2013 statement, appellant described the June 1, 1983 incident. He explained that he was a passenger in a coworker's car when he was involved in a car accident. Appellant was returning from an inspection in Norristown, Pennsylvania when the vehicle he was riding in at about four miles per hour was struck by another car traveling at a very high rate of speed. On the next day, following the accident, he could not get out of bed to go to work. Appellant sought treatment at a hospital.

In a December 2, 2013 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 December 7, 2013 appellant requested a review of the written record by an OWCP hearing representative. In a March 20, 2014 letter, he contended that he was wrongfully terminated while receiving workers' compensation benefits. Appellant requested compensation benefits and payment for his sick and vacation time from the date of his termination to the present. He alleged he had been unable to lift any weight since the day after the June 1, 1983 incident.

On March 31, 2014 J. Lynn Johns, an employing establishment management analyst, advised OWCP that the nature of a "place holder" was the assignment of a date of injury because appellant was unsure of the injury date. The employing establishment had no records pertaining to appellant's alleged automobile accident.

In an April 16, 2014 decision, an OWCP hearing representative affirmed the December 2, 2013 decision. He found no evidence that the claim had been filed within three years of the injury date.<sup>2</sup>

By letter dated April 23, 2014, appellant requested reconsideration.

In a June 11, 2014 letter, Ms. Johns stated that appellant's length of employment and/or any circumstances surrounding his separation from the employing establishment could not be verified as there were no records to confirm that he was an employee. She stated that, even if his employment was terminated, his workers' compensation benefits would have continued until they were stopped by the Department of Labor.

In an August 6, 2014 decision, OWCP denied modification of the April 16, 2014 decision.

### **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 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

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<sup>2</sup> In the April 16, 2014 decision, an OWCP hearing representative noted appellant's reference to a previously accepted employment injury and stated that OWCP had accepted that he sustained cervical and lumbar spine injuries as a result of a November 15, 1984 car accident under File No. xxxxxx356. He recommended that appellant file a Form CA-2a to claim a recurrence of disability related to this accepted injury.

<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).

<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).

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>

### ANALYSIS

The Board finds that appellant's traumatic injury claim is barred by the applicable time limitation provisions of FECA. On October 15, 2013 appellant claimed that he was involved in a car accident on June 1, 1983 during the course of his federal employment as an inspector.

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 June 1, 1983 injury until October 15, 2013, more than 10 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 June 1, 1986.

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

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<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).

<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).

reasonably on notice of an on-the-job injury or death.<sup>14</sup> There is no supporting evidence that appellant's immediate superior or another employing establishment official had actual or written knowledge of the alleged June 1, 1983 injury within 30 days. Ms. Marshall and Ms. Johns stated that a date of the claimed injury was established as June 1, 1983 because appellant was uncertain about the date of injury. Moreover, they stated that the employing establishment did not have any records related to the claimed incident or his employment.

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.

### **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 August 6 and April 16, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 16, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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