

been raped by three men on July 1, 1965 while stationed in Terengganu, Malaysia.² She described her injuries as bruises and cuts to the vagina and cervix, bruises on her legs and arms, and emotional trauma resulting in post-traumatic stress disorder (PTSD) and chronic depression.

By decision dated March 14, 2013, OWCP advised appellant that it accepted her claim for adult sexual abuse (ending July 1, 1965), major depression -- recurrent episode (beginning October 27, 2003), and PTSD (beginning October 27, 2003).³ However, the acceptance was for medical care only. OWCP noted that appellant submitted evidence indicating that employing establishment officials in Malaysia had knowledge of the rape within 48 hours, thus warranting the acceptance of her claim for medical treatment. It further explained that it appeared that the claim was untimely with respect to entitlement to wage-loss compensation benefits.

In a separate March 14, 2013 letter, OWCP requested that appellant submit evidence that she filed a timely claim pursuant to 5 U.S.C. § 8122. It noted that she filed her Form CA-1 on November 10, 2012 for an injury that occurred on July 1, 1965. OWCP explained that during the applicable time-frame, appellant had to file her claim within one year of the July 1, 1965 injury. It also explained that the one-year filing requirement could be waived if appellant filed within five years of the injury and she demonstrated there were circumstances beyond her control that prevented her from filing within one year of her injury. OWCP afforded appellant at least 30 days to submit evidence that she filed her claim in accordance with either the 1-year or 5-year time limitation(s).

On August 1, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 14, 2013 to August 1, 2016.

Appellant submitted a June 7, 2016 report from Dr. Paul Nestadt, a psychiatrist, who diagnosed PTSD, severe recurrent major depression, severe episode of recurrent major depressive disorder, essential hypertension, mild intermittent asthma, Type 2 diabetes, and hypothyroidism.

In an October 11, 2016 letter, OWCP advised appellant that while it understood the sensitive nature of the events of her injury, it was obligated to adjudicate her claim for wage-loss compensation under the appropriate statutory provisions of FECA. It explained that FECA provided a mandatory, maximum five-year rule to file a claim for compensation for injuries sustained prior to September 7, 1974, and in appellant's case there was no evidence of filing within five (5) years of July 1, 1965, the date of injury. If appellant was contending that her FECA claim was timely filed, OWCP requested evidence to show that a claim for compensation was filed within either the one-year limitation or the five-year limitation (with an explanation of the circumstances beyond appellant's control that prevented her from filing).

In response, appellant submitted an October 21, 2016 narrative statement indicating that waiver of the requirements for giving notice and filing a claim within one year could be granted

² Appellant was a 23-year-old volunteer teacher at the time of the assault. The employing establishment arranged for her return to the United States, and her volunteer services were terminated effective September 11, 1965. Appellant was impregnated as a result of the assault/rape, and delivered a still-born baby on March 12, 1966.

³ OWCP noted that the earliest medical evidence of record was dated October 27, 2003.

under 5 U.S.C. § 8122 in certain circumstances. She asked that OWCP provide her examples of the certain circumstances warranting waiver.

Appellant also submitted an October 28, 2016 letter from James M. Serapiglia, Ph.D., a psychologist, who indicated that he had never formally, clinically evaluated her, but knew her well as a friend for more than 50 years. Dr. Serapiglia asserted that appellant's traumatic injury caused mitigating circumstances that warranted a waiver of the statute of limitations for her claim.

In a second narrative statement received by OWCP on November 9, 2016, appellant indicated that she was unable to file her claim for compensation because she experienced a delayed onset of PTSD, and in August 2008 she was hospitalized due to her work-related injuries.

By decision dated February 28, 2017, OWCP denied appellant's claim for wage-loss compensation because it was not timely filed within the maximum, mandatory five-year time limitation, which could not be waived regardless of the reasons for, or the circumstances surrounding, the failure to file a claim within the prescribed time. It noted that appellant's case remained accepted for medical treatment.

LEGAL PRECEDENT

For injuries occurring between December 7, 1940 and September 6, 1974, OWCP procedures provide that written notice of the injury should be given within 48 hours as specified in section 8119 of FECA,⁴ but this requirement will be waived if the employee filed written notice within one year after the injury or if the immediate superior had actual knowledge of the injury within 48 hours after the occurrence of the injury.⁵

In cases of injury prior to September 7, 1974, FECA provides that a claim for compensation must be filed within one year of the date that the claimant was aware or reasonably should have been aware that the condition may have been caused by employment factors.⁶ The one-year filing requirement may be waived if the claim is filed within five years and (1) it is found that such failure was due to circumstances beyond the control of the person claiming benefits; or (2) that such person has shown sufficient cause or reasons in explanation thereof and material prejudice to the interest of the United States has not resulted from such failure.⁷

The test for whether sufficient cause or reason was shown to justify waiver of the one-year time limitation is whether a claimant prosecuted the claim with that degree of diligence which an ordinary prudent person would have exercised in protecting his or her right under the same or similar circumstances.⁸

⁴ *Albert K. Tsutsui*, 44 ECAB 1004, 1008 (1993).

⁵ 5 U.S.C. § 8119(b).

⁶ *Eugene L. Turchin*, 48 ECAB 391, 395 (1997).

⁷ *Id.*

⁸ *Edward Lewis Maslowski*, 42 ECAB 839 (1991).

The five-year time limitation is a mandatory requirement that neither OWCP, nor the Board, has the power to waive.⁹

ANALYSIS

In its March 14, 2013 decision, OWCP accepted appellant's claim for medical benefits, but noted that the record did not appear to demonstrate that she filed a timely claim with respect to wage-loss compensation benefits. On August 1, 2016 appellant filed a claim for wage-loss compensation (Form CA-7) for the period March 14, 2013 to August 1, 2016. The Board finds that appellant did not file her claim within the applicable time-limitation provisions of FECA.

Appellant filed the instant claim (Form CA-1) on November 10, 2012, more than 47 years after the July 1, 1965 employment-related injury. As OWCP advised her on both March 14, 2013 and October 11, 2016, FECA provides a mandatory, maximum five-year period to file a claim for compensation for injuries sustained prior to September 7, 1974 which neither OWCP nor the Board may waive. There is no evidence that appellant filed a claim within five years of her July 1, 1965 employment-related injury. Therefore, consideration of waiver of the requirements for filing a claim under 5 U.S.C. § 8122 in certain circumstances is not applicable. The five-year time limitation is a maximum, mandatory requirement that neither OWCP nor the Board has authority to waive.¹⁰ Consequently, the Board finds that appellant has not filed her claim for wage-loss compensation benefits within the applicable time limitation provisions of FECA. The Board notes that appellant's claim remains accepted for medical treatment.¹¹

CONCLUSION

The Board finds that appellant has not filed her claim for wage-loss compensation benefits within the applicable time limitation provisions of FECA. The case remains open for medical benefits.

⁹ *Roseanne S. Allexenberg*, 47 ECAB 498, 500 (1996).

¹⁰ *Supra* note 5; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3b (March 1993).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3b(4).

ORDER

IT IS HEREBY ORDERED THAT the February 28, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2018
Washington, DC

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

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

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