

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

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**L.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Milwaukee, WI, Employer**

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**Docket No. 17-1833  
Issued: February 21, 2018**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On August 29, 2017 appellant filed a timely appeal from an August 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 appellant's claim for compensation was timely filed pursuant to 5 U.S.C. § 8122(a).

**FACTUAL HISTORY**

On June 12, 2017 appellant, then a 45-year-old mail carrier, filed an occupational disease claim (Form CA-2) for spasmodic torticollis due to a slip and fall at work. He alleged that he first became aware of the condition and its relationship to his federal employment in 1999. He

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

asserted that he never knew about a Form CA-2 and that he should not have had to “go to college” to “obtain the truth”. The reverse of the claim form indicated that appellant separated from the employing establishment on April 28, 2000. Appellant reported the condition to his supervisor, D.R., on June 13, 2017 and was last exposed to conditions alleged to have caused his disease or illness on April 28, 2000.

By letter dated June 30, 2017, the employment establishment controverted the claim, contending that appellant’s prior claims under OWCP File Nos. xxxxxx568 and xxxxxx691 were denied and he was removed from employment on April 28, 2000.<sup>2</sup> It submitted employment records, including a Notice of Personnel Action (PS Form 50) dated July 11, 2000 which indicated that appellant was no longer in pay status as of April 28, 2000 due to his failure to be in regular attendance without justification.

On July 3, 2017, OWCP received an undated letter in which appellant noted a date of injury as January 1, 1999. Appellant expressed disappointment with waiting over 20 years for assistance with his claim especially in light of his military service during Desert Storm.

OWCP also received letters dated March 26 and April 4, 2007 from appellant’s counsel requesting reconsideration of an April 7, 2006 decision denying appellant’s claim under File No. xxxxxx568 for a December 22, 1998 back injury. An unsigned letter dated July 28, 2006 from the Clement J. Zablocki Medical Center indicated that appellant had spasmodic torticollis due to a 1998 fall at work.

On July 12, 2017 appellant informed OWCP that his date of injury was December 22, 1998 and that his prior claim for this same injury had been assigned OWCP File No. xxxxxx568. OWCP advised him to exercise the appeal rights that accompanied the denial of the claim under File No. xxxxxx568.

OWCP, in a July 13, 2017 letter, notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to a factual development questionnaire.

OWCP received a progress note dated December 6, 2004 from Dr. Norman C. Reynolds, Jr., a Board-certified neurologist, who examined appellant and assessed spasmodic torticollis likely secondary to trauma in a fall.

By decision dated August 14, 2017, OWCP denied appellant’s occupational disease claim under the present claim, File No. xxxxxx117, because it was untimely filed.<sup>3</sup> It found that the date of injury was December 22, 1998 and that he had not filed the claim within three years.

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<sup>2</sup> OWCP developed the present claim under File No. xxxxxx117. No other claims are before the Board on this appeal.

<sup>3</sup> OWCP initially issued a decision on August 10, 2017 finding that appellant’s occupational disease claim was untimely filed. By letter dated August 11, 2017, it requested that he disregard the August 10, 2017 decision as it was prematurely issued. OWCP noted that a decision would be issued after the 30 days afforded in the July 13, 2017 development letter.

OWCP further found that there was no evidence of record that appellant's immediate superior had actual knowledge within 30 days of December 22, 1998.

### **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>4</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. Under this section, a claim must be filed within three years unless "the immediate superior had actual knowledge of the injury or death within 30 days" or written notice of the injury or death was provided, as specified under 5 U.S.C. § 8119, 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 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.<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 or her 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 injury.<sup>10</sup>

### **ANALYSIS**

Appellant originally filed an occupational disease claim alleging that he sustained spasmodic torticollis due to a slip and fall at work. He later indicated that his injury occurred on

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<sup>4</sup> *Charles Walker*, 55 ECAB 238, 239 (2004); see *Charles W. Bishop*, 6 ECAB 571, 571 (1954).

<sup>5</sup> *Supra* note 1 at § 8122(a).

<sup>6</sup> *Id.* at § 8119; *Larry E. Young*, 52 ECAB 264, 266 (2001).

<sup>7</sup> *Laura L. Harrison*, 52 ECAB 515, 517 (2001).

<sup>8</sup> *Delmont L. Thompson*, 51 ECAB 155, 156 (1999).

<sup>9</sup> *Emma L. Brooks*, 37 ECAB 407, 411 (1986).

<sup>10</sup> *Delmont L. Thompson*, *supra* note 8.

December 22, 1998. Because appellant alleged that his injury stemmed from a specific employment incident on December 22, 1998, the Board finds that he actually filed a claim for a traumatic injury.<sup>11</sup> Moreover, the Board finds that his June 12, 2017 claim under File No. xxxxxx117 was untimely filed.

The time for appellant giving notice of injury and filing for compensation began to run at the time of the claimed incident on December 22, 1998.<sup>12</sup> Appellant did not file his claim form for a work injury until June 12, 2017. Therefore, his claim for this injury was not filed within the requisite three-year time limitation period.

Appellant's claim could still be considered timely if the 30-day notice provisions of 5 U.S.C. § 8122 were met, but in this case no probative evidence was presented to support that he provided notice of injury within 30 days. The employment establishment reported that it did not receive notice of appellant's claimed injury until June 13, 2017. Further, appellant did not provide any evidence that his immediate superior had actual knowledge of an employment injury within 30 days, nor is there any evidence that written notice of injury was given within 30 days. He did not respond to OWCP's development questionnaire nor did he provide OWCP with additional factual evidence regarding the delay in filing his claim.

The Board, therefore, finds that appellant failed to file a timely claim for compensation under the three-year time limitation of section 8122 of FECA.<sup>13</sup>

On appeal appellant contends that he sustained a traumatic injury on December 22, 1998 and filed every type of claim form for his injury, except an occupational disease claim form, in a timely manner. He asserts that OWCP denied his claims and failed to assist him with filing the correct claim form. The Board has held that unawareness of possible entitlement, lack of access to information, or ignorance of the law or one's rights and obligations under it do not constitute exceptional circumstances that excuse a failure to file a timely claim.<sup>14</sup> As such, the Board finds that appellant did not file a timely claim for compensation.

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.

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<sup>11</sup> 20 C.F.R. § 10.5(15), (16) defines a traumatic injury as a wound or other injury caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift. As appellant's exposure occurred only during one work shift, it is being treated as a condition arising from a traumatic work incident within a single day. *See J.S.*, Docket No. 13-2121 (issued March 5, 2014); *J.G.*, Docket No. 07-2371 (issued April 8, 2008).

<sup>12</sup> *See supra* notes 7 and 8.

<sup>13</sup> *C.M.*, Docket No. 17-0519 (issued May 12, 2017).

<sup>14</sup> *See R.A.*, Docket No. 12-1339 (issued December 6, 2012).

**CONCLUSION**

The Board finds that appellant's claim for compensation was untimely filed pursuant to 5 U.S.C. § 8122(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 14, 2017 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: February 21, 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