United States Department of Labor
Employees' Compensation Appeals Board

G.M., Appellant	)	
and	)	**Docket No. 18-0768**
	)	**Issued: October 4, 2018**
DEPARTMENT OF STATE, BUREAU OF DIPLOMATIC SECURITY, Washington, DC, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 26, 2018 appellant filed a timely appeal from a January 8, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant's emotional condition claim is barred by the applicable time limitation provisions of 5 U.S.C. § 8122(a).

[1] 5 U.S.C. § 8101 *et seq.*

[2] The case record provided to the Board includes evidence received after OWCP issued its January 8, 2018 decision. Appellant also provided additional evidence with his appeal. The Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On December 1, 2016 appellant, then a 68-year-old former special agent/security officer, filed an occupational disease claim (Form CA-2) alleging that he sustained post-traumatic stress disorder (PTSD) due to his work. He indicated that he first became aware of his claimed condition on May 8, 1992 and first realized on June 12, 1993 that it was caused or aggravated by factors of his federal employment. Appellant asserted that his job required him to protect and stop the assassination of guests of the U.S. Department of State.[3] On the reverse side of the claim form, a supervisory human resources specialist for the employing establishment indicated that appellant last worked for the employing establishment on August 22, 1992. The portion of the form for listing the date appellant reported his claimed condition to his supervisor was left blank.

Appellant submitted a May 8, 1992 report in which Dr. Edito C. Galvez, an occupational medicine physician for the employing establishment, indicated that appellant had reported reactive depression secondary to legal and marital problems. Dr. Galvez noted that appellant underwent therapy and indicated that the depression had completely resolved three months prior.

In a September 18, 2016 report, Dr. Renz J. Juaneza, an attending Board-certified psychiatrist, noted that he had treated appellant since September 2016 and advised that appellant had a provisional diagnosis of PTSD, as well as unspecified anxiety and depressive disorder. He indicated that appellant would require a prolonged period of treatment.

In a March 7, 2017 letter, an employing establishment official noted that appellant's former supervisor no longer worked for the employing establishment and, therefore, the reverse side of the Form CA-2 was completed by a supervisory human resources specialist. The official noted that, although appellant advised on the Form CA-2 that he did not report his claimed condition to the employing establishment in 1993 because he had been reassigned to the U.S. Embassy in Paris, the actual date of appellant's reassignment to U.S. Embassy in Paris was 1981. The official indicated that the date appellant stopped work, *i.e.*, August 22, 1992, was the date he was terminated from the employing establishment due to legal issues.

In a March 15, 2017 development letter, OWCP requested that appellant submit additional evidence in support of his claim, including a physician's opinion supported by a medical explanation as to how the reported work incidents caused or aggravated a medical condition. It requested that he complete and return an attached questionnaire which posed various questions regarding the work incidents that he believed caused or aggravated his claimed condition. On March 15, 2017 OWCP also requested additional information from the employing establishment. It afforded appellant 30 days to submit a response.[4]

Appellant submitted a September 14, 2016 report from Dr. Juaneza who noted that appellant presented with a main complaint of PTSD. He reported that he had numerous flashbacks

[3] Regarding why he did not file a Form CA-2 within 30 days of the date he realized his claimed condition was work related, *i.e.*, June 12, 1993, he noted, "I was reassigned to the U.S. Embassy in Paris, France, as [an assistant] security officer."

[4] Appellant did not complete and return the questionnaire and the employing establishment did not provide a response prior to the August 31, 2017 OWCP decision.

to terrorist attacks that occurred while he was working for the employing establishment. Dr. Juaneza recommended that appellant be treated with various medications.

In a January 24, 2017 report, Dr. Robert Toney, an attending Board-certified occupational medicine physician, diagnosed chronic PTSD and major depressive disorder.

In a March 16, 2017 report, Dr. Juaneza noted that he produced the report as additional support for appellant who had filed a claim after suffering a psychiatric injury in response to multiple traumatic events occurring prior to 1992, which in turn lead to PTSD. He diagnosed PTSD and mild-to-moderate major depressive disorder (recurrent) which he indicated had been severe since 1992. Dr. Juaneza noted that some of the events/duties that contributed to appellant's PTSD included protecting the U.S. Ambassador to Egypt from assassination, protecting a Turkish diplomat from assassination in New York City, attempting to find an explosive device in Paris, and speaking with a colleague on the telephone when a bomb was detonated, and receiving news that several close friends, including the U.S. Ambassador to Israel, had been killed in terrorist attacks. He indicated that appellant would require a prolonged period of treatment for his PTSD.

In a March 24, 2017 report, Dr. Juaneza indicated that he produced the report as additional support for appellant who had filed a claim after suffering a psychiatric injury in response to multiple traumatic events occurring prior to 1992, which in turn led to PTSD. He discussed appellant's PTSD symptoms, including poor sleep and hypervigilance, and diagnosed prolonged PTSD and major depressive disorder.

Appellant submitted a number of other documents, including a March 4, 1996 employing establishment document showing that he was terminated in August 1992, a February 10, 2016 disciplinary action regarding his employment in 2016 with the Baltimore City Department of Social Services, August 2 and September 15, 2016 letters from his congressional representative, a November 18, 2016 letter and other documents from the Baltimore City Department of Social Services regarding his request for reasonable accommodation and his requests for leave, January 12 and March 23, 2017 letters concerning a discrimination claim filed with the Maryland Commission on Civil Rights, administrative documents concerning his medical treatment in 2016, a personal résumé detailing his service as a security officer for the employing establishment in France, Costa Rica, and Jamaica in the 1980s, and letters from the mid-1990s sent by several individuals to President Clinton in connection with a petition for a presidential pardon.[5]

Appellant also submitted an undated document in which he provided reasons for his requesting counseling and treatment.[6] He noted that he had PTSD and anxiety, and he mentioned several incidents which he felt caused stress while working for the employing establishment,

[5] The record contains a U.S. District Court criminal docket showing that in January 1992 appellant was sentenced to 27 months imprisonment for conviction on Count 2 and Count 5 of an indictment. The document does not specifically identify the counts for which appellant was convicted, although it does refer to several "offenses charged" including making false statements for the acquisition of firearms, violations of the Arms Export Control Act of 1976, and failure to report transportation of monetary instruments in excess of $10,000.00.

[6] Appellant did not indicate from whom he was requesting counseling and treatment.

including an incident when he was the first person on the scene after the assassination of an American Colonel from the U.S. Embassy in Paris.

By decision dated August 31, 2017, OWCP denied appellant's emotional condition claim as untimely filed. It found that he failed to file his claim for an emotional condition within three years of the date of injury, or show that his immediate supervisor had actual knowledge within 30 days of the date of injury. OWCP indicated that the time for filing a claim does not begin to run until the employee was aware, or by the exercise of reasonable diligence should have been aware of the causal relationship of the compensable disability to the employment. It noted that appellant had such awareness in the early-1990s, but did not file his compensation claim until 2016.

On October 17, 2017 appellant requested reconsideration of OWCP's August 31, 2017 decision. He submitted copies of performance evaluations from the 1970s through the 1990s related to security jobs he performed in the Dominican Republic, Costa Rica, and Washington, DC, for the employing establishment, earnings and leave statements from the early-1990s, additional letters supporting his petition for a presidential pardon, excerpts from periodicals and other documents regarding terrorist threats and attacks at U.S. embassies in the 1970s through the 1990s, position descriptions for employing establishment jobs in the Dominican Republic and Costa Rica from the 1980s and 1990s, and a July 28, 2016 letter from the Department of Veterans Affairs denying his claim for a service-related PTSD condition.

In an October 25, 2017 report, Dr. Juaneza indicated that he produced the report as additional support for appellant who had filed a claim after suffering a psychiatric injury in response to multiple traumatic events occurring prior to 1992, which in turn lead to PTSD. He concluded that appellant developed PTSD due to exposure to traumatic events while working for the employing establishment.

By decision dated January 8, 2018, OWCP denied modification of its August 31, 2017 decision. It found that the additional evidence submitted by appellant did not show that it improperly denied his compensation claim as untimely filed.

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.[7] 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

[7] *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."[8]

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.[9] Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.[10]

In a case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between his or her claimed condition and their federal employment. Such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.[11] Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.[12] 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.[13] The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.[14]

ANALYSIS

The Board finds that the evidence of record establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the possible causal relationship between his federal employment and the compensable disability as early as June 12, 1993. In the occupational disease claim form he filed on December 1, 2016, appellant alleged that he sustained PTSD due to his former job as a special agent/security officer which required him to protect

[8] 5 U.S.C. § 8122(a).

[9] *Id.* at § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

[10] *Laura L. Harrison*, 52 ECAB 515 (2001).

[11] *Larry E. Young*, *supra* note 9.

[12] *Id.*

[13] 5 U.S.C. § 8122(b); *see Luther Williams, Jr.*, 52 ECAB 360 (2001). The Board has found that the statute of limitations begins to run on the date that the employee actually knows of the possible relationship between the employee's condition and his or her federal employment, or reasonably should have known of the possible relationship. *William A. West*, 36 ECAB 525, 528-29 (1985).

[14] *Debra Young Bruce*, 52 ECAB 315 (2001).

individuals from assassination and other harm. On this form, he indicated that he first became aware of his claimed condition on May 8, 1992 and first realized on June 12, 1993 that it was caused or aggravated by his federal employment. Appellant's explicit linking of work duties with his development of an emotional condition shows that he knew as early as June 12, 1993 of the possible relationship between these aspects of his employment and his claimed medical condition.[15]

The medical evidence of record also supports a finding that appellant was aware in the early-1990s of a possible relationship between his work and his claimed emotional condition, including PTSD. In several reports dated in 2016 and 2017, appellant reported to Dr. Juaneza that he believed that his emotional condition was caused by incidents which occurred while working for the employing establishment. As appellant last worked for the employing establishment on August 22, 1992, these incidents would have occurred by that date. For example, in a March 16, 2017 report, Dr. Juaneza noted that he produced the report as additional support for appellant who had filed a claim after suffering a psychiatric injury in response to multiple traumatic events occurring prior to 1992, which in turn lead to PTSD. Dr. Juaneza diagnosed PTSD and mild-to-moderate major depressive disorder (recurrent) which he indicated had been severe since 1992. He discussed events and duties that occurred or were performed prior to appellant's last day of work for the employing establishment, *i.e.*, August 22, 1992, and he posited that they contributed to appellant's PTSD. These events and duties included protecting the U.S. Ambassador to Egypt from assassination, protecting a Turkish diplomat from assassination in New York City, attempting to find an explosive device in Paris and speaking with a colleague on the telephone when a bomb was detonated, and receiving news that several close friends, including the U.S. Ambassador to Israel, had been killed in terrorist attacks.

The totality of the factual circumstances of record establish that appellant was aware or should have been aware as early as June 12, 1993 that his claimed injury was possibly due to employment factors. Appellant, however, did not file his claim for an employment-related condition until December 1, 2016 and he therefore did not file his claim within the requisite three years of his awareness of the possible relationship between the implicated employment incidents and the claimed medical conditions.[16] Appellant submitted numerous factual documents in support of his claim, but these documents do not show that he timely filed his compensation claim.

Appellant's last possible exposure to the implicated employment factors occurred no later than August 22, 1992, his last day of work with the employing establishment. As noted above, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.[17] In the present case, the time limitation actually began to run after appellant's last date of exposure (August 22, 1992) because appellant, by his own admission, was not aware of the relationship between his claimed condition

[15] *See supra* notes 12 through 14.

[16] *See supra* notes 8 and 9.

[17] *See supra* note 13.

and employment factors until June 12, 1993. As noted, since appellant did not file a claim until December 1, 2016, 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 injury within 30 days or under section 8122(a)(2) if written notice of injury was given to his immediate superior within 30 days as specified in section 8119.[18] He has not made any claim that he has satisfied either of these provisions, nor does the record support a finding that he has satisfied either of them.

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's emotional condition claim is barred by the applicable time limitation provision of 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 4, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[18] *See supra* notes 9 through 11. There is no indication in the record that appellant provided a statement to his immediate superior such that he satisfied the provisions of sections 8119 and 8122(a) of FECA.