



to learning on or about July 15, 2013 that he had been reassigned to another position. He indicated that he both became aware of his condition and realized that it was caused or aggravated by factors of his federal employment on July 15, 2013. Appellant indicated that his issues were “continuous.”

In a statement dated November 11, 2018, appellant indicated that on approximately July 15, 2013 he learned that management had reassigned him from a position as a management analyst to a position as a contract specialist at a different work location.<sup>2</sup> He maintained that he had immediately experienced extreme stress and that “such issues continue to this very day.” Appellant advised that he had missed work intermittently from July 18, 2013 through November 15, 2015 due to stress.

In a development letter dated January 2, 2019, OWCP informed appellant that the evidence submitted was currently insufficient to establish his claim, noting that it did not appear that his claim was timely filed. It advised him of the type of medical and factual evidence needed, including the date that he had become aware of his condition, the date of last exposure to the identified workplace stressors, and a detailed description of the employment factors to which he attributed his condition. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant’s allegations.

In a January 24, 2019 response, appellant again alleged that he had experienced stress after learning about his involuntary reassignment on July 15, 2013. He related, “I was written out of work by a medical doctor from July 18 through August 31, 2013 due to the aforementioned issues surrounding my forcible reassignment and the stress[-]related issues I was and [am] currently experiencing.” Further appellant alleged that he was “written out of work” by the same medical provider from November 13 to 15, 2013, January 7 to 9, 2014 and indicated since these specific times that he has been “written out of work” due to his work-related stress. He advised that the issues from his stress-related condition continued to the present.

By decision dated February 27, 2019, OWCP denied appellant’s occupational disease claim as it was untimely filed. It found that he had become aware of the relationship between his condition and his federal employment on July 15, 2013, but had not filed a claim until November 19, 2018.

On March 11, 2019 appellant requested reconsideration. He asserted that the issue to which he attributed his condition were continuous, and thus maintained that it was “unfair to assign a fixed beginning date.”

By decision dated May 28, 2019, OWCP denied appellant’s request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

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<sup>2</sup> Appellant additionally contended that he had sustained physical injuries on various dates. OWCP developed the issue of whether he had sustained an orthopedic condition under OWCP File No. xxxxxx307.

## **LEGAL PRECEDENT -- ISSUE 1**

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>

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 condition and his or her 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.<sup>5</sup> 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.<sup>6</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>7</sup> It is the employee's burden to establish that a claim is timely filed.<sup>8</sup>

## **ANALYSIS -- ISSUE 1**

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

In his November 19, 2018 occupational disease claim, appellant advised that he had become aware of his condition and its relationship to his federal employment on or around July 15, 2013. In statements dated November 11, 2018 and January 24, 2019, he related that he continued to experience stress-related issues due to his reassignment.

OWCP found appellant's claim untimely under 5 U.S.C. § 8122(a). It determined that he had become aware of his condition and its relationship to his employment on July 15, 2013, but had not filed the claim until November 29, 2018, more than three years later. However, appellant filed an occupational disease claim and noted that he had continuing stress due to a series incidents to the present time caused by exposure to the identified employment factors. The time limitations does not begin to run until appellant is no longer exposed to the identified factors alleged to have

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<sup>3</sup> A.S., Docket No. 18-1094 (issued February 7, 2019); C.D., 58 ECAB 146 (2006).

<sup>4</sup> 5 U.S.C. § 8122(a).

<sup>5</sup> See G.M., Docket No. 18-0768 (issued October 4, 2018).

<sup>6</sup> L.H., Docket No. 19-0818 (issued December 9, 2019).

<sup>7</sup> 5 U.S.C. § 8122(b); see also J.E., Docket No. 16-1493 (issued May 7, 2018).

<sup>8</sup> See A.S., *supra* note 3.

contributed to an employment injury.<sup>9</sup> The Board has held that, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.<sup>10</sup> Appellant specified that the employment factors causing his stress-related condition continued to the present day. Therefore, his claim was timely filed under 5 U.S.C. § 8122(a).

As appellant has filed a timely claim for compensation, the case is remanded to OWCP to further develop and adjudicate the merits of the claim. Following any further development that it deems necessary, it shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).<sup>11</sup>

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 28 and February 27, 2019 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: January 28, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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

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<sup>9</sup> *C.L.*, Docket No. 16-0854 (issued August 24, 2016).

<sup>10</sup> *R.A.*, Docket No. 16-0090 (issued March 21, 2016).

<sup>11</sup> In view of the Board's disposition of issue one regarding the merit issue of timeliness, the issue of whether OWCP properly denied appellant's request for reconsideration of the merits of the claim under section 8128(a) is moot.