

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

S.H., Appellant	)	
	)	
and	)	Docket No. 22-0610
	)	Issued: October 21, 2022
DEPARTMENT OF COMMERCE, NATIONAL	)	
OCEANIC & ATMOSPHERIC	)	
ADMINISTRATION, NATIONAL MARINE	)	
FISHERIES SERVICES, SOUTHWEST	)	
FISHERIES SCIENCE CENTER, Arcata, CA,	)	
Employer	)	
	)	

*Appearances:*  
Sally F. LaMacchia, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. McGINLEY, Alternate Judge

**JURISDICTION**

On March 16, 2022 appellant, through counsel, filed a timely appeal from a December 16, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

## FACTUAL HISTORY

On May 20, 2021 appellant, then a 61-year-old fisheries biologist, filed an occupational disease claim (Form CA-2) alleging that he developed a stress-related condition due to factors of his federal employment. He noted that he first became aware of his condition on January 1, 2011 and realized its relation to his federal employment on January 1, 2014. Appellant did not immediately stop work.

In a statement dated May 19, 2021, appellant alleged that his emotional condition was caused by the following incidents: in July 2011, his supervisor J.S. transferred his duty station from Klamath Falls, OR to Arcata, CA; after the transfer, he experienced stress due to the proximity of his office to J.S.' office in the new duty location; statements made by I.L., a regional administration assistant and J.S., that appellant was "unstable"; vague, incomplete or conflicting instructions from J.S.; the denial of training opportunities; disproportionate discipline issued by J.S.; and withdrawing his flexible work schedule. He indicated that he was constantly unsure of the requirements of his job due to the difficult and untenable relationship with J.S., which was cumulative and debilitating. Appellant was taken off work by his physician in November 2016 and he was on extended leave through July 1, 2017. He returned to work on July 3, 2017 and on May 22, 2018, the employing establishment proposed to remove him and he was placed on administrative leave on May 23, 2018.

In a development letter dated June 11, 2021, OWCP informed appellant of the deficiencies of 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. OWCP afforded appellant 30 days to respond.

Appellant submitted a narrative statement from C.H., a supervisor in Arcata, CA. He also submitted e-mails between J.S. and himself dated October 26, 2011 through September 20, 2016.

By decision dated July 23, 2021, OWCP denied appellant's occupational disease claim, finding that it was untimely filed. It noted that he first became aware of the relationship between his condition and his federal employment on January 1, 2014, but did not file the claim until May 20, 2021.

On August 19, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

Appellant, through counsel, submitted a brief dated September 3, 2021 and indicated that he began working for the employing establishment in 2008 and physically moved to the Arcata, CA office in 2014. He remained in this position until his last day of work on May 23, 2018.

Counsel asserts that the time for filing a claim for an occupational disease does not begin to run until the date of the employees last exposure to the implicated work factors. In a statement dated May 19, 2021, appellant described an ongoing, difficult relationship with his supervisor, J.S., which continued until his last day of work on May 23, 2018. He reported that he filed his Form CA-2 on May 20, 2021, and was last exposed to the implicated conditions less than three years later on May 23, 2018 and, therefore, the claim was timely filed.

By decision dated December 16, 2021, an OWCP hearing representative affirmed the July 23, 2021 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>4</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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>7</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>8</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>9</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 his or her federal employment,

---

<sup>3</sup> *Supra* note 2.

<sup>4</sup> *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989)

<sup>5</sup> *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

<sup>8</sup> 5 U.S.C. § 8122(a).

<sup>9</sup> *See G.M.*, Docket No. 18-0768 (issued October 4, 2018).

the time limitation begins to run on the date of the last exposure to the implicated factors.<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> It is the employee's burden to establish that a claim is timely filed.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

In his May 20, 2021 occupational disease claim, appellant advised that he had become aware of his condition on January 1, 2011 and its relationship to his federal employment on or around January 1, 2014. In his May 19, 2021 statement, he related that he continued to experience stress-related issues due to his continued contact with his supervisor, J.S., until he went on administrative leave on May 23, 2018.

OWCP found appellant's claim untimely under 5 U.S.C. § 8122(a). It determined that he had become aware of his condition on January 1, 2011 and its relationship to his employment on January 1, 2014, but had not filed the claim until May 20, 2021, more than three years later. However, appellant filed an occupational disease claim and noted that he had continuing stress due to a series of incidents up to May 23, 2018 caused by exposure to the identified employment factors. The time limitations do not begin to run until appellant is no longer exposed to the identified factors alleged to have contributed to an employment injury.<sup>13</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. Appellant specified that the employment factors causing his stress-related<sup>14</sup> condition continued to May 23, 2018. Therefore, the Board finds that the 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 this and any other such further development that is deemed necessary, it shall issue a *de novo* decision.

### CONCLUSION

The Board finds that appellant met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

---

<sup>10</sup> *L.H.*, Docket No. 19-0818 (issued December 9, 2019).

<sup>11</sup> 5 U.S.C. § 8122(b); *see also J.E.*, Docket No. 16-1493 (issued May 7, 2018).

<sup>12</sup> *A.S.*, Docket No. 18-1094 (issued February 7, 2019); *C.D.*, 58 ECAB 146 (2006).

<sup>13</sup> *C.L.*, Docket No. 16-0854 (issued August 24, 2016).

<sup>14</sup> *R.A.*, Docket No. 16-0090 (issued March 21, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 21, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board