

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On August 12, 2020 appellant, then a 43-year-old medical officer, filed an occupational disease claim (Form CA-2) alleging that her recurrent major depressive disorder had been aggravated by factors of her federal employment. She noted that she first became aware of her condition on November 2, 2016 and realized its relation to her federal employment on October 26, 2018. Specifically, appellant attributed the aggravation of her preexisting major depressive disorder to her difficulty keeping up with deadlines at work and other work stressors. On the reverse side of the form, the employing establishment noted that on November 1, 2019 she informed her supervisor of her condition and relationship to her work. It noted that appellant's work assignment was unchanged.

In reports dated September 27, 2018 and March 29, 2019, Dr. Dushyant Bhatt, a Board-certified internist, noted that appellant was seen that day for depression with suicidal ideation.

In reports dated October 26, 2018, March 18, April 29, August 8, October 3, 2019, and January 9, 2020, Dr. Joseph A. Holmes, an osteopathic physician specializing in psychiatry, noted that appellant was seen for ongoing anxiety and depressive symptoms. Appellant stated that she had struggled with her depression symptoms, but recently her symptoms have become unmanageable due to recent events.

On January 25, 2019 appellant was seen by Dr. Jared W. Atkinson, a psychiatrist, for depression.

On April 20, 2020 appellant was seen by Dr. Gabriella F. Greco, an osteopathic physician specializing in psychiatry, for recurrent depressive disorder. She complained of increased work stress and that she had an administrative action taken against her.

In a report dated May 22, 2020, Dr. Sara B. Olack, a psychiatrist, diagnosed ongoing depression and provided a treatment plan.

In a June 30, 2020 report, Dr. Venkata R. Chittilla, a psychiatrist, noted that appellant complained of increased work stress. Appellant had also related that, due to her failure to meet deadlines, she was on the verge of losing her job. Dr. Chittilla opined that appellant needed continued mental health services to prevent further deterioration or relapses and to maintain stabilization.

In a July 15, 2020 report, Maureen L. Reardon, Ph.D., a clinical psychologist, noted that appellant came under her care for individual psychotherapy services on November 2, 2016. She diagnosed recurrent major depressive disorder based on history and clinical presentation. Dr. Reardon noted that it was apparent that appellant's symptoms had been aggravated at various times by various stressors including increased work demands and deadlines during the past year.

On August 13, 2020 the employing establishment controverted appellant's claim, asserting that her diagnosed medical condition was unrelated to any factors of her employment, and that her claim had not been filed until her counsel was notified that she was facing termination.

In a development letter dated August 19, 2020, OWCP informed appellant of the deficiencies of her claim, including that it was untimely filed. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. 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. It afforded both parties 30 days to respond.

In an August 31, 2020 response, the employing establishment noted that appellant had a history of depression since 1998, which had been successfully treated by 2007. In December 2009, appellant began her employment at the employing establishment and she transferred sections in March 2015. The employing establishment noted that in 2016 new standards were published. Appellant did not meet her standards at her 2019 to 2020 mid-term review. She was placed on a performance improvement plan (PIP) in February 2020. The employing establishment noted that appellant failed the PIP, but that the April 2020 proposal to remove her from her position was delayed in order to search for a position to which she could transfer. The search, however, was unsuccessful. In June 2020, appellant was notified that she had failed the PIP, she thereafter filed a Form CA-2 requesting placement on leave without pay.

Appellant, through counsel, subsequently submitted additional factual and medical evidence. In a report dated September 14, 2020, Dr. Edward Landis, Ph.D., related her employment history. He related that since 2015 appellant was assigned an extremely heavy workload and short timelines in which to complete her work. As a result of the high-pressure environment, appellant experienced symptoms of depression and anxiety. Dr. Landis noted that on October 26, 2018, "a VA psychiatrist" discussed with her that her symptoms had become unmanageable, and she became aware at that point that her symptoms were related to her employment.

OWCP also received e-mail correspondence between appellant and her supervisor, covering the period April 16 through July 29, 2019 regarding appellant's work requirements.

In a September 15, 2020 response to OWCP's questionnaire, appellant described her work load, her short deadlines, and her struggles with trying to keep up with her workload. She noted that she would continue to work after hours. Appellant related that all of her work had deadlines with case preparations due within 72 hours; patient encounters signed within 24 hours; and narrative summaries turned over within five days of receipt. No consideration was afforded for leave, holidays, or weekends.

By decision dated September 25, 2020, OWCP denied appellant's claim, finding that it was untimely filed as she realized the relationship between her condition and her federal employment on November 2, 2016, but did not file the claim until August 12, 2020.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 period of FECA,⁴ 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.⁵ 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.⁶

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a 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.⁸

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.⁹ 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.¹⁰ 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

³ *Id.*

⁴ *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.S.*, *id.*; *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *L.S.*, *id.*; *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

⁸ 5 U.S.C. § 8122(a); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

⁹ *M.B.*, Docket 20-0066 (issued July 2, 2020); *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

¹⁰ *Id.*

relationship between the employment and the compensable disability.¹¹ It is the employee's burden to establish that a claim is timely filed.¹²

ANALYSIS

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

Where an 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.¹³ Appellant has alleged that she was exposed to a stressful work environment due to a heavy workload and tight deadlines, after a change in performance standards in 2016. She was placed on a PIP in February 2020 and was notified of the proposal to remove her from employment in June 2020. Appellant first became aware of her condition on November 2, 2016 and realized its relation to her federal employment on October 26, 2018. Statements from appellant and the employing establishment establish that she continued to be exposed to the work factors she identified as aggravating her depression through June 2020.

The time limitations does not begin to run until appellant is no longer exposed to the identified factors alleged to have contributed to an employment injury.¹⁴ 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.¹⁵ Therefore, the Board finds that appellant's claim was timely filed under 5 U.S.C. § 8122(a), within three years of the date of last exposure.

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's claim for compensation was timely filed within the applicable time limitation provisions of 5 U.S.C. § 8122(a).

¹¹ 5 U.S.C. § 8122(b).

¹² *M.B.*, *supra* note 9; *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

¹³ *M.B.*, *id.*; *S.O.*, *supra* note 9.

¹⁴ *A.M.*, Docket No. 19-1345 (issued January 28, 2020); *C.L.*, Docket No. 16-0854 (issued August 24, 2016).

¹⁵ *Supra* note 9.

ORDER

IT IS HEREBY ORDERED THAT the September 25, 2020 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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