

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

|                                      |   |                          |
|--------------------------------------|---|--------------------------|
| R.R., Appellant                      | ) |                          |
|                                      | ) |                          |
| and                                  | ) | Docket No. 23-0380       |
|                                      | ) | Issued: October 17, 2023 |
| DEPARTMENT OF VETERANS AFFAIRS,      | ) |                          |
| VETERANS BENEFITS ADMINISTRATION,    | ) |                          |
| REGIONAL OFFICE, Salt Lake City, UT, | ) |                          |
| Employer                             | ) |                          |
|                                      | ) |                          |

*Appearances:*  
Brian K. Jackson, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 23, 2023 appellant, through counsel, filed a timely appeal from a September 19, 2022 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 to consider the merits of this case.

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<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 filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122 (a).

## FACTUAL HISTORY

On July 28, 2021 appellant, then a 66-year-old legal administrative specialist, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety and depression due to factors of her federal employment, including continuous harassment, discrimination, and retaliation. She indicated that she first became aware of her condition and realized that it was caused or aggravated by her federal employment on September 4, 2014. On the reverse side of the claim form, the employing establishment noted that on July 28, 2021 she informed her supervisor of her condition and relationship to her federal employment. Appellant's supervisor, D.D., recounted that it was evident to him that the director wanted her terminated, that he observed unfair and unfavorable treatment of appellant, and that he refused to sign a false statement regarding appellant.

Appellant provided a July 21, 2021 narrative statement describing actions of the employing establishment between 2014 and January 2019 which she believed caused and contributed to her diagnosed conditions. She recounted that the employing establishment proposed to terminate her on August 24, 2018. Appellant alleged that following the proposed termination through January 2019 the quality review team was directed to find errors in her work, so that her monthly percentages would be unacceptable and the employing establishment could terminate her. She alleged that stress from micromanagement, harassment, scrutiny, and meanness was ongoing and continuing such that she sought medical treatment in December 2018. Appellant asserted that in January 2019 the employing establishment gave her three options, resign, find a new position or continue working in the same hostile environment. After she resigned, the employing establishment provided a notice of personnel action (Standard Form (SF) 50) which indicated that she resigned in lieu of termination, which she disputed with the Merit System Protection Board (MSPB) resulting in the removal of this designation.

In a December 13, 2018 note, Dr. Marc O. Anderson, a family practitioner, found that appellant was totally disabled from work from December 12 through 19, 2018.

In a July 29, 2021 development letter, 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.

On July 22, 2021 Dr. Anderson diagnosed depression beginning on November 5, 2014 and continuing through December 2018 due to stress at work.

In an August 9, 2021 statement, the employing establishment disputed appellant's claim alleging that there was no factual evidence that her medical condition was causally related to her

work activities or environment. It alleged that she had not established fact of injury, performance of duty, or causal relationship.

On July 30, 2021 D.D. completed a statement asserting that his senior manager, J.B., informed him that appellant had a behavioral issue which he should document. He subsequently documented multiple cases in which her behavior was not in line with employing establishment expectations. D.D. determined, however, that the issue was more so due to a personality clash between appellant and J.B. because in the performance of her job she often engaged in lengthy and detailed calls with clients, which negatively affected statistical data used to measure J.B.'s performance. J.B. asked that D.D. sign an inaccurate statement regarding appellant's performance. When D.D. declined, J.B. "began seeking methods of displaying her disappointment" resulting in him leaving his position.

On August 23, 2021 the employing establishment provided a February 23, 2019 SF 50 indicating that appellant resigned effective February 23, 2019 in lieu of an adverse action. A corrected form was issued on April 3, 2019 merely indicating that she resigned.

By decision dated September 1, 2021, OWCP denied appellant's claim, finding that it was untimely filed as she realized the relationship between her condition and her federal employment on September 4, 2014, but did not file the claim until July 28, 2021. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 26, 2022 appellant, through counsel, requested reconsideration and contended that she continued to experience retaliation and harassment from September 4, 2014 through February 23, 2019 when she resigned, and continuing. She provided December 13, 2018 treatment notes from Dr. Anderson diagnosing major depression and opining that this was aggravated by her issues at work.

By decision dated September 19, 2022, OWCP denied modification of its prior 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 period 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

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<sup>3</sup> *Id.*

<sup>4</sup> *S.K.*, Docket No. 21-0592 (issued February 21, 2023); *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).

<sup>5</sup> *S.K.*, *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).

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 a 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 federal employment, 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 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.<sup>13</sup> Appellant has alleged that she was exposed to a stressful work environment

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

<sup>7</sup> *M.B., id.*; *Charles Walker, id.*; *Charles W. Bishop, id.*

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

<sup>9</sup> *S.K., supra* note 4; *M.B., supra* note 6; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 8122(b).

<sup>12</sup> *S.K., supra* note 4; *M.B., supra* note 6; *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

<sup>13</sup> *S.K., M.B., id.*; *S.O., supra* note 9.

due to a harassment, discrimination, and retaliation which was ongoing and continuing such that she sought medical treatment in December 2018. In January 2019, after she resigned, the employing establishment provided a SF 50 which indicated that she resigned in lieu of termination, which she disputed and was later removed. Statements from appellant establish that she continued to be exposed to the work factors she identified as aggravating her depression through January 2019.

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.<sup>14</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>15</sup> Therefore, the Board finds that appellant's claim was timely filed under 5 U.S.C. § 8122(a) on July 28, 2021, within three years of the date of last exposure in January 2019.

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).

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<sup>14</sup> *S.K.*, *supra* note 4; *A.M.*, Docket No. 19-1345 (issued January 28, 2020); *C.L.*, Docket No. 16-0854 (issued August 24, 2016).

<sup>15</sup> *Supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 19, 2022 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: October 17, 2023  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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