

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

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G.J., Appellant)	
)	
and)	Docket No. 22-0778
)	Issued: April 4, 2024
U.S. POSTAL SERVICE, LOS ANGELES POST)	
OFFICE, Los Angeles, CA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 18, 2022 appellant filed a timely appeal from a March 17, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 January 21, 2022 appellant, then a 66-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 1, 1999 he was injured when lifting while in the performance of duty. The employing establishment controverted his claim, contending that it was

¹ 5 U.S.C. § 8101 *et seq.*

untimely filed. Appellant stopped work on April 6, 2001. OWCP assigned OWCP File No. xxxxxx967.²

In an attached statement, appellant explained that he sustained a right rotator cuff tear due to excessive lifting, working on the sawtooth and the small parcel and bundle sorter, and unloading pallets, over-the-road containers, and all-purpose containers. On December 1, 1999 he suffered a recurring injury when transferring magazines from pallets to all-purpose containers on the main floor of the employing establishment in his reassigned working area and reported the injury to his supervisor, D.P., who reported it to the distribution manager, S.J. Appellant stated that “[b]ecause the injury occurred in the same location, I believe my current injury is related to this one.” He also sustained a split from his shoulder to his collarbone that necessitated a total shoulder replacement on September 22, 2020. Appellant indicated that he would never be able to work again as the injury had rendered him completely disabled.

In a development letter dated January 31, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter of the same date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

OWCP subsequently received medical evidence from Michael J. Sukay, a Board-certified orthopedic surgeon. In a February 22, 2022 response to OWCP’s development questionnaire, appellant noted that he informed his supervisor of his December 1999 injury on the date of. He also noted that S.J., the distribution manager, was aware of him “re-injuring my same shoulder, but it was not recorded in the system.” In an undated statement, appellant stated that he returned to work in 2001 until he had a recurrence of his right rotator cuff tear on the job at the end of December 2001. He asserted that he reported the injury to D.P., his supervisor, who reported it to S.J.

By decision dated March 17, 2022, OWCP denied appellant’s traumatic injury claim, finding that it was untimely filed.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of their 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, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the

² OWCP previously accepted a May 3, 1998 traumatic injury claim under OWCP File No. xxxxxx246 for left shoulder strain and rotator cuff repair; and a March 9, 1999 traumatic injury claim under OWCP File No. xxxxxx855 for right shoulder strain and rotator cuff repair. It had not administratively combined OWCP File Nos. xxxxxx246 and xxxxxx855 with the present claim.

³ *Supra* note 1.

employment injury. 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.⁴

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.⁵ 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.⁶

Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of the alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.⁷ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁸

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

On his Form CA-1, appellant reported that his alleged injury occurred on December 1, 1999. However, he did not file his Form CA-1 until January 21, 2022, more than 22 years later. Therefore, the filing of his traumatic injury claim is outside of the three-year time limitation.⁹

The Board also finds that there is no evidence of record that appellant's immediate supervisor had actual knowledge within 30 days of the alleged injury, or that appellant provided written notice of injury within 30 days of its occurrence.¹⁰ In multiple statements, appellant asserted that, on the date of injury, he reported the injury to his supervisor, D.P., who reported it to the distribution manager, S.J. However, he produced no evidence to corroborate this assertion or to substantiate that his immediate supervisor was aware of the alleged injury within 30 days of its occurrence or that he submitted written notice within 30 days.¹¹ In response to the January 31, 2022 development letter, appellant submitted medical reports which are irrelevant to the timeliness

⁴ *D.J.*, Docket No. 18-0620 (issued October 10, 2018).

⁵ *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *R.T.*, Docket No. 18-1590 (issued February 15, 2019); *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

⁶ *Id.*

⁷ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

⁸ *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

⁹ *Supra* note 5.

¹⁰ *Supra* note 7.

¹¹ *J.S.*, Docket No. 22-0347 (issued September 16, 2022); *Larry E. Young*, *supra* note 7.

issue. Appellant, therefore, has not met his burden of proof to establish that he timely filed a traumatic injury claim.

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 has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 4, 2024
Washington, DC

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

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

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