

² The Board notes that following the November 14, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On December 28, 2023, appellant, then a 57-year-old auditor, filed an occupational disease claim (Form CA-2) alleging that she developed anxiety, depression, migraines, and post-traumatic stress disorder (PTSD) due to factors of her federal employment. She noted that she first became aware of her condition and realized its relationship to her federal employment on June 23, 2017.³ On the reverse side of the claim form, the employing establishment noted that appellant first reported her condition to her supervisor on December 28, 2023. It further noted that appellant was separated from her employment on August 9, 2019.

On September 14, 2018, appellant sought treatment in a hospital emergency room for an asthma attack. She was also diagnosed with depression, anxiety, and carpal tunnel syndrome.

In a September 17, 2018 report, Dr. Kenneth D. Jones, a clinical psychologist, diagnosed panic attacks with asthma attacks. On November 8, 2018, he diagnosed a moderately-severe nervous disorder and recommended 30 days' leave from work. In a December 6, 2018 note, Dr. Jones repeated his diagnosis and found that appellant was in no emotional condition to return to work. On April 4, 2019, he diagnosed a moderately-severe nervous disorder and related that she had not worked since November 8, 2018 due to this condition. Appellant attempted to return to work on April 1, 2019 and experienced asthma and anxiety attacks. Dr. Jones found that she was totally disabled for 30 days.

On April 23, 2021, Dr. Rohini Mehta, a Board-certified psychiatrist, examined appellant due to a history of depression and anxiety. She noted appellant's history of emotional abuse by her supervisor and described her main stressor as an ongoing lawsuit with the employing establishment and financial difficulties.

On May 24, 2023, appellant asserted that the employing establishment had denied her December 2017 request for reasonable accommodations to telework full-time due to anxiety. She alleged that Supervisor O.R. yelled, "Absolutely not" in response to this request. Appellant asserted that she had previously been approved to telework two days a week.

In a letter dated December 7, 2023, appellant related that she was permanently disabled because of her alleged employment injuries due to misconduct which were documented in a 2017 Equal Employment Opportunity Commission (EEOC) claim.

The employing establishment controverted appellant's claim on January 2, 2024 and denied that her immediate supervisor had actual knowledge of her conditions and the relationship to her employment within 30 days of the date of injury.

On January 3, 2024, appellant asserted that the employing establishment and her immediate supervisor had actual knowledge of her emotional conditions in 2017. She provided an incident report to the Occupational Safety and Health Administration (OSHA) dated

³ OWCP assigned the present claim OWCP File No. xxxxxx911. Appellant has prior claims before OWCP. Under OWCP File No. xxxxxx973, it accepted that as of June 26, 2018 appellant developed employment-related asthma with an acute exacerbation. At the time of the decision currently on appeal, OWCP had not administratively combined appellant's claims.

November 8, 2021, in which she related that she experienced an asthma attack on that date which triggered a panic attack.

In a January 17, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of appellant's statements, and factual and medical evidence related to her employment-related exposure in the course of her federal employment. OWCP afforded the employing establishment 30 days to respond.

Appellant responded on January 20, 2024 and asserted that in 2017 she filed an EEOC complaint against the employing establishment.

OWCP subsequently received an August 30, 2018 memorandum in which appellant requested that her supervisor, O.R., afford her advanced sick leave. In an e-mail dated March 25, 2019, appellant informed O.R. that her absence from work beginning November 8, 2018 was due to his failure to honor the reasonable accommodation requested which resulted in "multiple asthmatic attacks and psychological complications" which led to a constructive suspension. He denied this request.

By decision dated May 6, 2024, OWCP denied appellant's occupational disease claim, finding that it was untimely filed, pursuant to 5 U.S.C. § 8122(a).

On May 8, 2024, appellant requested reconsideration. She asserted that her immediate supervisor had knowledge of her emotional/stress-related conditions when she filed her initial EEOC claim. Appellant further asserted that she provided the medical diagnoses in writing to her supervisors for approval of leave under the Family and Medical Leave Act (FMLA). Appellant indicated that she engaged in EEOC activities on June 6, 2017 and that the current management officials were aware of her prior EEOC complaint. She asserted that O.R. became aware on January 8, 2018. Appellant listed her medical conditions as anxiety and asthma. She first became aware of asthma in 2008 and anxiety in July 2017. Appellant asserted that she developed anxiety as a consequence of her asthma, which was impacted by her office assignment. She required more anxiety medication as she became anxious when trying to breathe. Appellant asserted that O.R. denied her request for reasonable accommodations for asthma and/or anxiety as "not valid" and opined that she had "no medical limitations to support that request."

By decision dated August 5, 2024, OWCP denied modification.

On August 9, 2024, appellant requested reconsideration. She resubmitted the OSHA claim form and requested wage-loss compensation. Appellant referenced additional statements and documentation in other claims and decisions before other tribunals. She provided additional narrative statements.

By decision dated November 14, 2024, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.⁸ 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.⁹

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.¹⁰ 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.¹¹ 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

⁴ *Supra* note 1.

⁵ *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).

⁶ *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).

⁷ *L.S.*, *id.*; *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

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

¹⁰ *M.B.*, *supra* note 8; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

¹¹ *Id.*

should have been aware, of the causal relationship between the employment and the compensable disability.¹² It is the employee's burden to establish that a claim is timely filed.¹³

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 of the injury or last exposure to the implicated employment factors,¹⁴ or written notice of the injury was provided within 30 days pursuant to section 8119.¹⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁶ An employee must show not only that his or her immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.¹⁷

ANALYSIS

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

On December 28, 2023, appellant filed a Form CA-2 noting that she first became aware of her condition and realized its relation to her federal employment on June 23, 2017. Under section 8122(b), the time limitation begins to run when she became aware of causal relationship, or, if she continued to be exposed to work factors after awareness, the date she is no longer exposed to those factors.¹⁸ The case record establishes that appellant was separated from her federal employment on August 9, 2019. Therefore, the three-year time limitation began to run on August 9, 2019. As appellant did not file her occupational disease claim until December 28, 2023, the Board finds that it was not filed within the three-year time period under section 8122(b).¹⁹

¹² 5 U.S.C. § 8122(b).

¹³ *M.B.*, *supra* note 8; *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

¹⁴ *See A.A.*, Docket No. 14-764 (issued July 28, 2014); *see also A.K. Welford*, Docket No. 03-1562 (issued August 19, 2003).

¹⁵ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); 8119(a), (c); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3a(3) (March 1993); *see J.S.*, Docket No. 22-0347 (issued September 16, 2022); *see also Larry E. Young*, *supra* note 10.

¹⁶ *S.O.*, *supra* note 10; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

¹⁷ *L.G.*, Docket No. 16-0535 (issued February 6, 2017); *Charlene B. Fenton*, 36 ECAB 151 (1984).

¹⁸ *Supra* note 1 at § 8122(b).

¹⁹ *C.D.*, Docket No. 24-0902 (issued September 30, 2024); *G.C.*, Docket No. 12-1783 (issued January 29, 2013).

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if her immediate supervisor had actual knowledge of the injury within 30 days of the injury or last exposure to the implicated employment factors.²⁰

In an e-mail dated March 25, 2019, appellant informed O.R. that her absence from work beginning November 8, 2018 was due to his failure to honor the reasonable accommodation requested which resulted in "multiple asthmatic attacks and psychological complications."

The Board finds that the evidence of record is sufficient to establish that appellant's immediate superior, O.R., had actual knowledge of an on-the-job injury of consequential "psychological complications" on March 25, 2019, which was within 30 days of appellant's date of last exposure.²¹ Consequently, the exception to the statute was met and her claim for compensation for an emotional condition was timely filed.

The case shall, therefore, be remanded for OWCP to adjudicate the claim. Following this, and other such development as deemed necessary, OWCP shall issue a *de novo* decision.²²

CONCLUSION

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

²⁰ *Supra* note 14.

²¹ *Gerald A. Preston*, 57 ECAB 270 (2005); *Duet Brinson*, 52 ECAB 168 (2000); *William D. Goldsberry*, 32 ECAB 536 (1981); *George C. Yoder*, 30 ECAB 465 (1979).

²² *T.R.*, Docket No. 21-1167 (issued April 4, 2022); *L.E.*, Docket No. 14-1551 (issued October 28, 2014).

ORDER

IT IS HEREBY ORDERED THAT the November 14, 2024 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 15, 2025
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