

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

E.D., Appellant)
and) Docket No. 23-1144
DEPARTMENT OF DEFENSE, OFFICE OF) Issued: September 17, 2025
INSPECTOR GENERAL, Alexandria, VA,)
Employer)

)

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
JANICE B. ASKIN, Judge

JURISDICTION

On September 6, 2023 appellant filed a timely appeal from an August 10, 2023 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 her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On May 12, 2023 appellant, then a 45-year-old general investigator, filed an occupational disease claim (Form CA-2) alleging that she developed chronic migraines due to a hostile work

¹ 5 U.S.C. § 8101 *et seq.*

environment and harassment during the period June 1, 2015 through approximately December 15, 2017. She noted that she first became aware of her condition on January 1, 1998 and realized its relation to her federal employment on June 1, 2015. On the reverse side of the claim form, appellant's current immediate supervisor, L.A., asserted that appellant first reported her condition on May 8, 2023 and that she was last exposed to the conditions alleged to have caused her chronic migraines on December 15, 2017.

In a development letter dated May 16, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence of record necessary to establish that she provided timely notice of her employment injury. It afforded her 60 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested information from the employing establishment regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded the employing establishment 30 days to respond.

In a letter dated August 14, 2019, a third-line supervisor, P.G. detailed the symptoms of appellant's migraine headaches and the accommodations afforded to her by the employing establishment. P.G. stated that since appellant began working for him approximately six years prior, she had suffered debilitating migraine headaches that had steadily worsened through the years. He advised appellant to request a reasonable accommodation to telework full-time since 2016. P.G. noted that while this accommodation alleviated appellant from her commute and enabled her to break her workday into portions when she felt well enough to work, it had not resolved appellant's situation. He stated that appellant was frequently unable to complete her full workday within the operating hours of the employing establishment, and that the impact of her migraine headaches had increased in frequency and magnitude. The employing establishment had also allowed appellant flexible hours so that she could log out during the workday, medicate, and lay down in a dark and silent room until she recovered to the point that she could either resume working or remain on leave for the remainder of the workday.

In a May 31, 2023 response to OWCP's May 16, 2023 development letter, appellant noted that during the period June 1, 2015 through December 15, 2017, she had experienced harassment and mistreatment from her former immediate supervisors K.G. and R.D.² She related that she had reported the hostile work environment in 2017 to her third-line supervisor, P.G. on several occasions and that he had an ongoing investigation into these matters. Appellant further explained that she had not submitted an EEO claim because she worked through her management chain, P.G., and he was able to provide relief for the hostile environment. She further attributed the worsening of her migraine symptoms to the increased level of stress.

In a June 2, 2023 memorandum to the Office of the Inspector General for the Department of Defense, appellant's current supervisor, L.A., noted that prior to becoming appellant's supervisor, she only had hearsay knowledge of some of the issues that management had with K.G. and R.D. However, as soon as she began to fulfill her roles and responsibility as appellant's supervisor, she learned firsthand information appellant shared about her prior experience with K.G. and R.D. In April 2018, L.A. issued appellant her performance plan and met with her to discuss

² The case record indicates that appellant was under K.G.'s immediate supervision until her retirement in December 2017. Appellant was then under R.D.'s immediate supervision from December 2017 to April 2018 and under L.A.'s immediate supervision beginning in April 2018.

it. Appellant told L.A. that she did not trust management and that K.G. would publicly disrespect and humiliate her every time appellant did something wrong or not in the way K.G. preferred. She stated that K.G. would communicate negative feedback from R.D. and that she thus felt hesitant to deal with R.D. L.A. noted that it became clear to her that appellant's past experience with K.G. and possibly R.D. had affected her in a deep way, as appellant was not confident of her work ability and experience. In or around 2018, L.A. was in a meeting with appellant and R.D. L.A. perceived that R.D. had taken personal offense to a response appellant provided to him, but that it was not meant to be personal, and that L.A. believed that R.D.'s reaction was not objective. In another instance around 2018 or 2019, appellant expressed hesitation with a briefing because she did not feel comfortable around R.D. L.A. further noted that she had other complaints from appellant's co-workers about K.G.'s leadership. L.A. stated that all aspects of appellant's job could be perceived as stressful due to the nature of the work performed, and that additionally, exposure to R.D. was an added stressor. L.A. noted that prior to becoming her supervisor, appellant had no conduct problems and that she was a responsible, hard-working employee with a strong work ethic and integrity.

On June 16, 2023 OWCP received a series of emails between appellant and P.G. which noted appellant's declining health and her telework reasonable accommodation. The emails did not reference the cause of appellant's declining health.

By decision dated August 10, 2023, OWCP denied appellant's 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 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 is whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁷ In cases of injury on or after September 7,

³ *Supra* note 1.

⁴ *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *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 *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

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 an occupational disease claim, 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 federal 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 relationship between the employment and the compensable disability.¹¹ It is the employee's burden of proof to establish that a claim is timely filed.¹²

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 his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days.¹³ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury.¹⁴

ANALYSIS

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

Appellant submitted a Form CA-2 on May 12, 2023 alleging that she developed chronic migraines due to a hostile work environment and harassment during the period June 1, 2015 through approximately December 15, 2017. She noted that she first became aware of her condition on January 1, 1998 and realized its relation to her federal employment on June 1, 2015. If 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 his or her federal employment, the time limitation begins to run on the date of the last exposure to the implicated

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

⁹ *See A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

¹⁰ *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young, id.*

¹¹ 5 U.S.C. § 8122(b).

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

¹³ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young, supra* note 9.

¹⁴ *S.O.*, *supra* note 9; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

factors.¹⁵ The evidence of record reflects that the date of last exposure to the implicated employment factors occurred in 2018, during a meeting in which L.A., appellant's current supervisor, met with appellant and R.D. L.A. related that she perceived R.D. had taken personal offense to a response appellant provided to him, but that it was not meant to be personal, and that she believed that R.D.'s reaction was not objective. This 2018 incident was the last documented incident occurring between R.D. and appellant. As such, this constitutes the last exposure to the implicated employment factors.¹⁶ As the claim was filed more than three years after this last exposure, the claim would be considered untimely filed.

Appellant's claim would still be regarded as timely under FECA if her immediate supervisor had actual knowledge of her injury and any possible relation to her federal employment within 30 days, or if written notice of injury was given to her immediate supervisor within 30 days of injury.¹⁷ Appellant has alleged that during the period June 1, 2015 through December 15, 2017, her immediate supervisors K.G. and R.D. harassed her and created a hostile environment, which led to her migraines. However, she has not submitted any evidence that she provided written notice of injury to these supervisors, or that they had actual knowledge of her alleged injury, within 30 days.¹⁸ Similarly, while supervisor L.A. described an incident in 2018 wherein she believed R.D. provided an inappropriate response to appellant, the evidence of record is insufficient to establish that she had actual knowledge or written notice of appellant's injury within 30 days. The Board thus finds that appellant has not met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

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 and 10.607.

CONCLUSION

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

¹⁵ *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *S.O.*, *supra* note 10.

¹⁶ *Supra* note 10.

¹⁷ *L.H.*, Docket No. 19-0818 (issued December 9, 2019); *C.S.*, Docket No. 18-0009 (issued March 22, 2018).

¹⁸ *Supra* notes 13 and 14.

ORDER

IT IS HEREBY ORDERED THAT the August 10, 2023 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board