

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

M.R., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
PUGET SOUND HEALTH CARE SYSTEM,
Seattle, WA, Employer**

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**Docket No. 14-793
Issued: October 7, 2014**

Appearances:
Lonnie Boylan, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 25, 2014 appellant, through her representative, filed a timely appeal from a November 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim as untimely. 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.

ISSUES

The issues are: (1) whether appellant's occupational disease claim is barred by the applicable time limitation provisions of FECA; and (2) whether she sustained an emotional condition in the performance of duty.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 30, 2013 appellant, then a 66-year-old nurse, filed an occupational disease claim alleging that she sustained post-traumatic stress disorder (PTSD) causally related to factors of her federal employment. She indicated that she first became aware of her condition on July 5, 2005 and attributed it to her employment on October 1, 2010. Appellant maintained that she notified the employing establishment within 30 days but the employing establishment did not advise her to file a new claim. She stopped work on November 4, 2010. The employing establishment indicated that appellant's supervisor first learned of appellant's condition on September 20, 2013.

By letter dated October 2, 2013, OWCP requested that appellant submit factual and medical evidence in support of her claim. It advised her that it did not appear that her claim was timely filed and asked that she explain when she became aware of her condition and discuss the events that she believed caused or aggravated her condition. OWCP provided appellant 30 days within which to submit additional evidence.

In a decision dated November 4, 2013, OWCP denied appellant's claim after finding that it was not timely filed. It determined that there was no evidence that the claim was filed within three years of the date of injury or that her supervisor had actual knowledge of a work-related condition within 30 days of the injury. OWCP noted that appellant had not responded to its request for additional information.

On appeal, appellant's representative asserts that appellant filed a recurrence of disability due to an accepted emotional condition under file number xxxxxx178. OWCP, however, found that appellant had not established a recurrence of disability and instructed her to file a new claim. Appellant's representative maintains that appellant's new claim had an injury date of November 4, 2010, the date she became disabled and that the employing establishment was timely aware of her initial injury.

LEGAL PRECEDENT -- ISSUES 1 & 2

Section 8122(a) of FECA² provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.³ Section 8122(b) provides that, in latent disability cases, the time limitation 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.⁴ The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.⁵ Even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section

² *Id.*

³ *Id.* at § 8122(a).

⁴ *Id.* at § 8122(b).

⁵ See *Linda J. Reeves*, 48 ECAB 373 (1997).

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 8119.⁶ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁷ The Board has indicated that an employee need only be aware of a possible relationship between his or her “condition” and his or her employment to commence the running of the applicable statute of limitations.⁸

In order for appellant to establish her claim that she sustained an emotional condition in the performance of duty, she must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁹

ANALYSIS -- ISSUES 1 & 2

On September 30, 2013 appellant filed an occupational disease claim alleging that she sustained PTSD of which she became aware on July 5, 2005. She first related the condition to her federal employment on October 1, 2010 and stopped work on November 4, 2010. The claim form indicates that appellant was last exposed to her work duties on November 4, 2010, the date she retired. The time for filing an occupational disease claim begins when the employee first becomes aware or reasonably should have been aware, of a possible relationship between the condition and her employment. Where an appellant continues in such employment after she reasonably should have been aware that her condition was related to factors of her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.¹⁰ In this case, she continued to work until November 4, 2010 and filed her claim on September 30, 2013, within three years of her last exposure to factors of her employment. Appellant’s claim is not barred by the time limitations under FECA.

The Board finds, though, that appellant has failed to provide a description of the specific employment factors which she attributes to her emotional condition. By letter dated October 22, 2013, OWCP advised her to submit a detailed factual statement describing the employment incidents alleged to have caused her emotional condition. Appellant did not submit such a statement. Her burden of proof includes the submission of a detailed description of the employment factors or conditions which he or she believes caused or adversely affected the condition for which compensation is claimed.¹¹ Appellant failed to specifically identify the

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

⁷ *Willis E. Bailey*, 49 ECAB 509 (1998).

⁸ *Edward C. Horner*, 43 ECAB 834, 840 (1992).

⁹ *See J.M.*, Docket No. 09-583 (issued September 17, 2009); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹⁰ 5 U.S.C. § 8122(b); *see also Bennie L. McDonald*, 49 ECAB 509 (1981).

¹¹ *See Janet L. Terry*, 53 ECAB 570 (2002); *John Polito*, 50 ECAB 347 (1999).

factors to which she attributed her claimed condition and failed to establish an essential element of her 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant's claim is not barred by the time limitation provisions of FECA. The Board further finds that she has not established that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: October 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board