

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRED L. ODOM and ARKANSAS STATE POLICE,
HIGHWAY PATROL, Little Rock, AR

*Docket No. 98-1482; Submitted on the Record;
Issued December 23, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant filed his claim for compensation within the applicable time limitations.

On September 11, 1996 appellant, then a 51-year-old retired state police officer, filed a claim for a myocardial infarction (MI) he sustained on December 15, 1980. Appellant related that he was requested by federal agents of the Bureau of Alcohol, Firearms and Tobacco to assist in serving an arrest warrant and a search warrant on a suspect for federal firearms violations. Appellant indicated that he had met the suspect previously and the suspect had threatened his life. He stated that, while he was helping the federal agents, he sustained an MI and had to be immediately transported to the hospital. He noted that in subsequent years he sustained two additional MIs, underwent coronary bypass surgery and eventually had a heart transplant.

In a January 17, 1997 decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that written notice of his claim was not timely filed as required. Appellant requested a hearing before an Office hearing representative, which was conducted on December 9, 1997. In a January 7, 1998 decision, the Office affirmed the Office's January 17, 1997 decision.¹

The Board finds that appellant did not file his claim within the required, applicable time limitation.

¹ Appellant appealed to the Board and his appeal was filed on April 1, 1998. In an April 29, 1998 decision, the Office denied appellant's request for a second hearing before an Office hearing representative on the grounds that he was not entitled to a second hearing before an Office hearing representative. The Board and the Office may not have concurrent jurisdiction over the same issue of the same case at the same time. *Douglas E. Billings*, 41 ECAB 880 (1990). The Office's April 29, 1998 decision therefore is null and void.

Sections 8191 to 8193 of the Federal Employees' Compensation Act² provide compensation for local law enforcement officers not employed by the United States who are injured in the apprehension or attempted apprehension of persons for the commission of a crime against the United States. Section 8193(c), in pertinent part, states:

“An application for any benefit under [the Act] may be made only --

(1) to the Secretary of Labor

* * *

(3) within five years after the injury or death; and

(4) in such form as the Secretary of Labor may require.”

The applicable section of the Office's regulations state:

“A claim for benefits under the Act must be received by the Office within five years after the injury or death. This five-year limitation is maximum and mandatory and is not subject to waiver.”³

The Office's procedure manual states:

“An application for benefits must be made on the appropriate form within five years of the injury or death. Because the claimant's official superior will most likely not be a federal employee and because of the wording of the statute, written notice must be received by the Department of Labor within five years and neither written nor verbal notice to the official superior will suffice. There is no provision for waiver or an exception for medical benefits only.”⁴

In this case, appellant filed his written claim with the Office almost 16 years after he sustained an MI while assisting federal law enforcement agents in making an arrest. His claim, therefore, was filed beyond the five-year time limitation set forth in section 8193. By federal regulation, this time limitation is a mandatory, maximum limitation that cannot be waived. Appellant contended that he was never informed by federal officials or by his superiors of his right to file a claim for compensation with the federal government. However, this argument cannot prevail against the statutory and regulatory requirement that such a claim from a local law enforcement officer must be submitted in writing to the Office within five years of the injury of the officer. Appellant's claim, therefore, was not timely filed within the requirements of the Act.

² 5 U.S.C. §§ 8191-8193.

³ 20 C.F.R. § 10.613.

⁴ Federal (FECA) Procedure Manual, Part 4 -- Special Case Procedures, *Nonfederal Law Enforcement Officers*, Chapter 4.200.6(a).

The decision of the Office of Workers' Compensation Programs dated January 7, 1998, is hereby affirmed.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member