

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM S. WATTS and DEPARTMENT OF DEFENSE,
JOINT PROGRAM OFFICE FOR BIOLOGICAL DEFENSE, Falls Church, VA

*Docket No. 00-1328; Submitted on the Record;
Issued March 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant's claim for exposure to malathion is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

On May 20, 1998 appellant, then a 49-year-old security manager, filed an occupational disease claim alleging that on August 10, 1980 he was exposed to malathion while detailed at the Umatilla Army Depot in Hermiston, Oregon. Appellant stated that he was out of work for 45 days after the incident and never fully recovered. Appellant stated that he first became aware of his injury on August 10, 1980 and on September 1, 1996 first realized that his condition was caused or aggravated by his employment. He alleged that he did not file the claim within 30 days after the incident because he did not decide to file until he was terminated from employment on May 1, 1998.¹ Appellant also submitted a statement dated May 26, 1998 outlining the events leading to his termination from federal employment.

In a letter dated December 8, 1998, the Office of Workers' Compensation Programs requested that the employing establishment provide information regarding appellant's claim. By letters also dated December 8, 1998, the Office requested further information from appellant including information pertaining to the development of the claimed condition and when appellant first noticed it.

In a letter dated January 5, 1999, appellant noted that he was injured in August 1980 while attempting to determine the origin of a chemical odor and that he had never fully recovered. He again recounted events leading up to his termination from federal employment and alleged that his injury was aggravated by stress at work in 1995 and 1996.

¹ The record contains little information regarding the 1980 incident and does not indicate that appellant filed a claim under the Act at that time.

In support of his claim, appellant submitted medical records including an attending physician's report from Dr. Steven R. Smith² dated August 13, 1980, a hospital discharge summary dated August 16, 1980, a memorandum dated August 20, 1980 from Dr. Smith, a letter from him dated February 3, 1993 and attending physician's reports from Dr. Lewis Eberly, a Board-certified psychiatrist and neurologist, and Dr. Raymond J. Murow, a Board-certified internist, dated May 29, 1998. Appellant also submitted various employment records detailing his May 1998 termination from federal employment.

The employing establishment submitted a statement dated August 11, 1998, in which appellant's supervisor, Robert T. Ranhofer, advised that he had been appellant's supervisor for approximately 32 months and described appellant's job responsibilities. Mr. Ranhofer stated that he had no information regarding appellant's medical condition.

By decision dated May 13, 1999, the Office denied appellant's claim on the grounds that it was not timely filed in accordance with the Act. On June 8, 1999 appellant requested a review of the written record. In an October 6, 1999 decision, an Office hearing representative affirmed the prior decision.

The Board finds that this case is not in posture for decision.

Section 8122 of the Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death unless the immediate superior had actual knowledge within 30 days after the injury or written notice of the injury was provided to the employing establishment in accordance with section 8119 of the Act³ within 30 days after the injury. In the case of a latent disability,⁴ the time does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his or her employment.⁵

In this case, appellant filed a claim on May 20, 1998. He stated in his claim form that he first became aware of his injury on August 13, 1980, but that he did not realize that his current condition was connected to his employment until September 1, 1996. The record indicates that on August 13, 1980 appellant sought medical treatment for an employment-related reaction to malathion and was hospitalized for several days. He thus would have had three years from that date to file his claim in a timely manner or his immediate supervisor would have had to have actual knowledge of the injury.

While the Office sent a letter of inquiry to the employing establishment, the response received contains little information regarding the 1980 incident. The only evidence submitted

² Dr. Smith's credentials are not known.

³ 5 U.S.C. § 8119.

⁴ The Board notes that the term latent disability refers to an injury or disability of insidious onset, such as an occupational disease or condition produced by exposure to toxic chemicals, fumes or poisons. *Paul S. Devlin*, 39 ECAB 715 (1988).

⁵ 5 U.S.C. § 8122; *Paul S. Devlin*, *supra* note 4.

regarding the incident includes an attending physician's report dated August 13, 1980 that was submitted by appellant. In that report, Dr. Smith, an employing establishment physician, noted that appellant was seen on August 10, 1980 and reported the following history:

“While on special detail, employee inhaled some noxious fumes that made him nauseous and gave him a severe headache. At clinic, [complained of] sudden onset of nausea, [headache], weakness, photophobia. Three episodes of vomiting (two dry).”

He diagnosed probable exposure to insecticide, noted that a mild headache remained and referred appellant to Dr. Daniel T. Schneider, an internist.

Appellant also submitted a discharge summary from the Good Shepherd Hospital, in which Dr. Schneider indicated that appellant was admitted from his office on August 11, 1980 for evaluation of severe headache, blurred vision, nausea, vomiting and tightness in his chest. Appellant was discharged on August 15, 1980 with a diagnosis of probable insecticide/malathion toxicity.

Appellant also submitted a report dated August 20, 1980, in which Dr. Smith provided a detailed history of the August 10, 1980 incident and detailed findings on examination and noted that appellant had been admitted to the hospital. His final assessment was malathion exposure with an unusual or unexpected reaction, “perhaps due to an individual intolerance or related to anxiety reaction, headache possibly due to or precipitated by malathion or possible fraud, which I have no reason to believe but certainly is possible.” In a letter dated February 3, 1993, Dr. Smith advised that, after review of the medical literature, he determined that appellant had an idiosyncratic reaction to an organophosphate.

Proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁶ The record in this case indicates that appellant was seen at the employing establishment clinic on August 10, 1980, the day of the insecticide exposure. However, the Office did not seek records regarding the incident. Clinic notes from Dr. Smith which may be in the possession of the employing establishment may establish that there was timely knowledge by the immediate superior pursuant to section 8122(a)(1) of the Act.⁷ The Board, therefore, finds that the case must be remanded to the Office for further development regarding whether appellant's claim for insecticide exposure on August 10, 1980 was timely filed.

Furthermore, appellant also alleged that stress at work caused his condition.

⁶ See *Mary A. Wright*, 48 ECAB 240 (1996).

⁷ 5 U.S.C. § 8122(a)(1); see Federal (FECA) Procedure Manual, Part 2 -- Claims, Time, Chapter 2.801.3(3) (March 1993). “Knowledge by ... [the] dispensary ... that an injury has been sustained ... constitutes actual knowledge.”

To establish that an emotional condition was sustained in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.⁸

In this case, appellant alleged that actions of management caused extreme nausea, headaches, vision problems, lack of sleep, blood pressure fluctuation and confusion and indicated that this aggravated his previous chemical exposure injury. He specifically stated that Mr. Ranhofer “challenge[d] him on every issue, change[d] performance standards, require[d] tasks which were unreasonable with ridiculous time lines for completion.” Appellant also submitted a medical report dated May 29, 1998, in which Dr. Murow diagnosed a cognitive disorder with memory loss associated with encephalopathy which he stated began after the 1980 chemical insult. Dr. Murow advised that appellant’s symptoms were severely increased as a direct result of work-related stress beginning in 1996. In a report also dated May 29, 1998, Dr. Eberly agreed with Dr. Murow’s conclusions.

When working conditions are alleged as factors causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on casual relationship and which working conditions are not deemed factors of employment and may not be so considered.⁹ In this case, the Office did not develop this aspect of appellant’s claim.

For the above reasons, the Board finds that the case must be remanded to the Office for further development regarding whether appellant’s supervisor had actual knowledge within 30 days of the claimed insecticide exposure in 1980 and to determine whether employment factors caused appellant’s condition in 1998 when he filed his occupational disease claim.

⁸ *Martin Standel*, 47 ECAB 306 (1996).

⁹ *Helen P. Allen*, 47 ECAB 141 (1995).

The decision of the Office of Workers' Compensation Programs dated October 6, 1999 is hereby vacated and the case is remanded to the Office for future proceedings consistent with this opinion.

Dated, Washington, DC
March 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member