United States Department of Labor
Employees' Compensation Appeals Board

IRENE RODRIGUEZ, Appellant	)	
and	)	**Docket No. 05-1716**
	)	**Issued: December 2, 2005**
DEPARTMENT OF THE AIR FORCE, KELLY AIR FORCE BASE, TX, Employer	)	

Appearances:
Irene Rodriguez, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge

JURISDICTION

On August 12, 2005 appellant filed a timely appeal of a May 6, 2005 decision of the Office of Workers' Compensation Programs, denying her claim for compensation as untimely filed. Pursuant to 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's claim for compensation was filed within the time limitations set forth in 5 U.S.C. § 8122.

FACTUAL HISTORY

On September 27, 2004 appellant, then a 59-year-old electrical equipment operator, filed a traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on November 15, 1990 she "tripped over pallet, injuring arm, legs and knee." In a narrative statement dated September 9, 2004, she reported that she had initially injured herself in October 1986 while in the performance of duty and then aggravated her injury in

November 1990. Appellant stated that the employing establishment was on notice for the injury from the October 17, 1986 injury; she reported that she did not file a claim earlier because she had access to the employing establishment clinic and her own physicians and over the years the injury had intensified.

The record contains a treatment note dated November 15, 1990 from the employing establishment medical facility reporting a history of tripping over a pallet of lumber at work. The employing establishment physician, Dr. Paul Howard, diagnosed knee contusions and left medial collateral ligament strain.

In a letter dated March 31, 2005, the Office requested additional evidence regarding the claim. On April 21, 2005 the Office received an April 19, 2005 letter from appellant stating that the employing establishment was on notice of the injury and she indicated that she was submitting a Form CA-16.[1] She submitted a letter dated August 29, 2003, addressed to the employing establishment and the Office, stating that she had initially suffered an injury on October 17, 1986 and the condition had become more aggravated over the years. Appellant stated, "It is for this reason that I am submitting this claim for assistance" for medical treatment and other benefits. She argued that documentation showed the employing establishment had notice of an injury.

By decision dated May 6, 2005, the Office denied the claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. The Office noted that appellant had not submitted a Form CA-16 or other evidence establishing that the claim was timely filed.

LEGAL PRECEDENT

Section 8122 (a) of the Federal Employees' Compensation Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[2] 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.[3] Even if a claim is not timely 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 injury or death within 30 days" or written notice of the injury as specified in section 8119 was provided within 30 days.[4]

ANALYSIS

In this case, appellant alleged that she tripped over a pallet and sustained injury on November 15, 1990. She was aware of an employment injury as of that date, but did not file the

[1] A Form CA-16 is a request for authorization of medical treatment. The record does not contain a Form CA-16.

[2] 5 U.S.C. § 8122(a).

[3] 5 U.S.C. § 8122(b).

[4] 5 U.S.C. § 8122(a)(1); *see also Larry Young*, 52 ECAB 284 (2001).

claim form until September 27, 2004. Appellant, therefore, did not file the claim within three years of the injury. To the extent that the August 29, 2003 letter contained "words of claim,"[5] it also was not filed within three years of November 15, 1990.

As noted above, a claim may be timely notwithstanding the failure to file within three years, if the immediate superior had actual knowledge of the injury within 30 days or written notice of injury was given within 30 days. In this case, the record indicates that appellant went to the employing establishment health clinic on November 15, 1990 and provided a history of tripping over a pallet of lumber and sustaining knee injuries. The Office's procedures provide, with respect to actual knowledge of the immediate superior under section 8122(a)(1): "Knowledge by the immediate superior, another official at the employing establishment or any agency physician or dispensary [sic] that an employee has sustained an injury, alleges that an injury has been sustained or alleges that some factor of employment has resulted in a physician condition *constitutes actual knowledge.*"[6] (Emphasis added.) The Board has recognized that "when a claimant seeks treatment at an employing establishment's health unit for a claimed condition, his supervisor is deemed to have actual knowledge of the claimed injury as of the date of said treatment."[7]

In this case, appellant went to the employing establishment health unit on November 15, 1990, reported an employment incident and received medical treatment from an employing establishment physician. Under these circumstances, the immediate superior is deemed to have actual knowledge of the employment injury under section 8122(a)(1). The actual knowledge was provided within 30 days of the injury and, therefore, the claim is timely filed.

CONCLUSION

The Board finds that appellant's claim was timely filed pursuant to 5 U.S.C. § 8122.

[5] *See Gary W. Hudiburgh, Jr.*, 37 ECAB 423 (1986).

[6] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (March 1993).

[7] *Delmont L. Thompson*, 51 ECAB 155, 156 (1999); *see also Nathan J. Bryant*, 20 ECAB 192 (1969) (employing establishment dispensary treatment notes were sufficient to establish written notice of injury).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2005 is reversed and the case remanded to the Office for a decision on the merits of the claim.

Issued: December 2, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board