



July 31, 1987 when a “systems error” occurred.<sup>1</sup> Following the incident, he experienced nightmares, depression and feelings of hopelessness and despair. In August 1994, appellant sought medical treatment for pain, fatigue and anxiety. The diagnosis was fibromyalgia. Appellant accepted a medical disability retirement effective March 6, 1996. He continued to experience neck, shoulder and facial pain and was diagnosed with severe depression. Appellant did not indicate when he was diagnosed with depression. In March 2004, he was diagnosed with PTSD related to the 1987 incident. On July 21, 2004 appellant sought compensation for lost wages beginning March 6, 1996.

In a June 11, 2004 report, Dr. John P. Schosheim, an attending Board-certified psychiatrist and neurologist, stated that he had treated appellant since March 9, 2004 for delayed PTSD. He provided a history that in 1987 a commercial airliner and a small plane almost collided near Miami Airport as a result of appellant’s error. This incident greatly upset appellant and he developed severe intermittent pain for a few years until he was diagnosed with fibromyalgia. He was granted disability retirement in 1996. Dr. Schosheim stated:

“Prior to seeing me, [appellant] has seen approximately [three] other psychiatrists both here and in Arizona where he lived for a few years. He is constantly tired, has no libido, remains in physical pain and on pain medications. [Appellant’s] sleep is disturbed, waking up at 2[:00] [or] 3[:00] a.m. nightly with difficulty falling back to sleep. Nightmares occur with intermittent regularity. His concentration is markedly impaired and he experiences anxiety on a regular basis with trembling and shaking at times.

“It is my considered medical opinion that [appellant] is suffering from [PTSD], Delayed Type and that this is due to the experiences he had while working as an Air Traffic Controller, specifically related to the near miss incident in 1987. His fibromyalgia is also directly related to ... the incident and is a symptom of the PTSD that he is suffering.”

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“In conclusion, there is no doubt that [appellant’s] illnesses of PTSD and fibromyalgia were caused by his employment and the incidences that occurred while he was an Air Traffic Controller. The pain problem began almost immediately after the initial incident and persists until today. [Appellant] also has all the symptoms of the diagnosis of PTSD and meets all the criteria for such a diagnosis.”

By decision dated April 6, 2005, the Office denied appellant’s claim on the grounds that it was not timely filed within three years of the date of injury.

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<sup>1</sup> A “Preliminary Operational Error/Deviation Report” dated July 31, 1987 describes a near mid-air collision involving two aircraft.

On May 4, 2005 appellant requested an oral hearing that was held on April 26, 2006. He testified that he did not mention the July 31, 1987 incident to any physician during the first few years after the incident. Appellant testified that, following the July 31, 1987 incident, he experienced the “normal” level of stress associated with the job of air traffic controller.

In an April 24, 2006 affidavit, Dr. Schosheim stated that June 2004 was the first time that appellant had been diagnosed with PTSD and the first time that the diagnosis was linked to his employment. He stated that appellant’s condition was directly related to, and was caused by, the incident on July 31, 1987 when he was working as an air traffic controller and a near miss occurred that might have resulted in multiple deaths. Dr. Schosheim stated:

“[Appellant] has experienced [PTSD] symptoms for years ... and continues in my care due to the persistence of these symptoms to this day. He also has not been able to sustain any significant, stable occupation.

“Delayed Onset: PTSD can manifest itself in various ways, one of which is ‘delayed onset.’ If the onset of the symptoms is at least [six] months after the traumatic event, a diagnosis of delayed onset PTSD is indicated. In [appellant’s] case, he sought treatment for physical pain following the trauma and was diagnosed by a rheumatologist as having fibromyalgia. Delayed onset PTSD can occur many years after the traumatic event, *e.g.*, veterans of the Vietnam and Iraq wars; adults with emotional disorders linked to early childhood traumatic events, such as child abuse, which were repressed.

“Misdiagnosis of fibromyalgia. [Appellant] sought treatment for chronic pain following the traumatic event. The symptoms of fibromyalgia include, among other things, overall aches and pains, sleeping disorders, irritable bowel syndrome and fatigue. At that point in time, [appellant] was experiencing all those symptoms. A diagnosis of PTSD is totally beyond the scope of rheumatology. Accordingly, when [appellant] was seen by a rheumatologist and presented symptoms consistent with fibromyalgia, as well as cervical radiculopathy, relating to disc damage in his spine, his rheumatologist addressed those symptoms and conditions. The issue of PTSD would have been beyond the scope of diagnosis and would not have surfaced. Furthermore, consistent with the symptoms of PTSD, [appellant] was disassociating from the traumatic event and did not discuss it with his rheumatologist until many years later. As a result, the diagnosis of fibromyalgia and the evaluation of [appellant’s] medical disability based solely on that diagnosis were inappropriate.

“There can be no doubt that [appellant] suffered a workplace injury in connection with the traumatic near miss incident and that he suffers [PTSD] as a direct consequence of that workplace incident.”

By decision dated May 19, 2006, the Office hearing representative affirmed the April 6, 2005 decision.

On May 17, 2007 appellant requested reconsideration.

By decision dated August 7, 2007, the Office denied modification of its denial.<sup>2</sup>

### **LEGAL PRECEDENT**

In cases of injury on and after September 7, 1974, section 8122(a) 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.<sup>3</sup> Section 8122(b) of the Act 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.

When an employee becomes aware or reasonably should have been aware that he or she has a condition which has been adversely affected by factors of his 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 effect would be temporary or permanent.<sup>4</sup> It is the employee's burden to establish that a claim is timely filed.<sup>5</sup>

### **ANALYSIS**

Appellant stated that he sustained his PTSD as a result of the near miss aircraft incident on July 31, 1987. The Office stated that appellant sustained a traumatic injury and should have been aware of his condition as of July 31, 1990, three years after the July 31, 1987 date of injury. However, PTSD is a psychiatric condition involving recurring, intrusive recollections of an overwhelming traumatic event. Sometimes the onset of symptoms is delayed, occurring many months or even years after the traumatic event.<sup>6</sup> Thus, appellant's PTSD could have begun months or years after the July 31, 1987 traumatic event. In fact, he stated that, following the July 31, 1987 incident, he perceived that he had the "normal" level of stress associated with the job of air traffic controller. Appellant initially sought treatment only for his physical pain caused by the July 31, 1987 incident.

The present case is complicated by the fact that at some point appellant became aware of emotional problems and consulted three psychiatrists. This occurred prior to his treatment with Dr. Schosheim in March 2004. Appellant has not however submitted treatment records, reports or affidavits from these three psychiatrists. He has not even provided the dates of treatment by

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<sup>2</sup> Subsequent to the August 7, 2007 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

<sup>3</sup> 5 U.S.C. § 8122(a).

<sup>4</sup> *Larry E. Young*, 52 ECAB 264 (2001).

<sup>5</sup> *Debra Young Bruce*, 52 ECAB 515 (2001).

<sup>6</sup> *See* The Merck Manual of Diagnosis and Therapy (18<sup>th</sup> ed. 2006), section 15, "Psychiatric Disorders," 1678. *See also* DORLAND'S, *Illustrated Medical Dictionary* (30<sup>th</sup> ed. 2003) 550.

the three psychiatrists he saw prior to Dr. Schosheim. Appellant has the burden of establishing that his claim was timely filed.<sup>7</sup> Because he stated that he sought treatment for his emotional condition at some date prior to consulting Dr. Schosheim in March 2004, it is his burden to prove that his claim was filed within three years of the date he first became aware, or should have been aware, that he had an emotional or psychiatric condition. As noted, when an employee becomes aware or reasonably should have been aware that he has a condition which is causally related to his employment, such awareness begins the limitation period, even though he does not know the precise nature of his impairment. If appellant was aware that he had an emotional condition related to the July 31, 1987 employment incident when he first consulted a psychiatrist, the three-year limitations period would commence by that date. Based on the evidence of record on appeal, he has not established that his 2004 compensation claim was filed within three years of the date he was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between the employment incident and his emotional condition.

Appellant's claim would still be regarded as timely under section 8122(a) (1) of the Act if his immediate superior or another employing establishment official had actual knowledge of the injury within 30 days of the date of injury. Therefore, his superior would need actual knowledge of his claimed injury by August 31, 1987, *i.e.*, within 30 days of July 31, 1987.<sup>8</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>9</sup> There is no evidence that appellant's immediate superior or another employing establishment official had actual knowledge of his claimed injury within 30 days of the date of injury. Appellant's claim would still be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.<sup>10</sup> However, there is no indication that he provided written notice of injury prior to July 13, 2004, the date he filed his Form CA-1.

### **CONCLUSION**

The Board finds that appellant failed to establish that his claim for PTSD was timely filed pursuant to section 8122 of the Act.

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<sup>7</sup> *Paul Foster*, 56 ECAB 208 (2004).

<sup>8</sup> *Larry E. Young*, *supra* note 4.

<sup>9</sup> *Kathryn A. Bernal*, 38 ECAB 470 (1987).

<sup>10</sup> 5 U.S.C. §§ 8122(a)(1), 8122(a)(2).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 7, 2007 is affirmed.

Issued: May 14, 2008  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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