

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

B.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Chicago, IL, Employer**

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**Docket No. 14-1659
Issued: June 8, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On July 28, 2014 appellant filed a timely appeal from a February 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 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 timely filed an occupational disease claim for compensation under 5 U.S.C. § 8122(a).

¹ Appellant also timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). The Board denied the request in a May 5, 2015 order on the grounds that no statement of reasons supporting the need for oral argument was received and her argument on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 14-1659 (issued May 5, 2015).

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 20, 2013 appellant, then a 55-year-old, former letter sorter machine clerk and mail handler, filed an occupational disease claim (Form CA-2) under File No. xxxxxx021 alleging that she first became aware of an aggravation of her preexisting connective tissue disorder and neck pain in March 2010. She further alleged that on March 18, 2013 she first realized that her conditions were caused or aggravated by her repetitive work duties. On the claim form, the employing establishment stated that appellant stopped work on January 12, 1989. It further stated that she first reported her injury to a supervisor on March 27, 2013.

In a March 20, 2013 letter, appellant stated that the employing establishment did not advise her about the filing date for her claim. She was diagnosed with a heart condition in 2010 that was acknowledged by the employing establishment's medical unit. Appellant contended that a May 7, 1985 work-related traumatic injury aggravated her conditions and rendered her unable to return to work after November 7, 1986.³ In a March 31, 2013 letter, appellant referenced accompanying medical records from the employing establishment's health unit dated August 22, 1984 to November 7, 1986. These records were mostly illegible chart notes that addressed the treatment of her neck, back, and bilateral leg conditions and her work capacity.

By letter dated April 23, 2013, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and submit medical evidence, if she had been treated at its medical facility.

On May 7, 2013 appellant submitted a description of her former work duties. She stated that she last worked for the employing establishment in January 1989, and again contended that her employment-related activities contributed to her condition. Appellant stated that she first became aware of a connective tissue disorder on October 26, 2012, when the diagnosis was confirmed by genetic testing at Cedars Sinai Hospital, not on March 1, 2010 as indicated on her claim form.

In a June 27, 2013 decision, OWCP found that appellant's occupational disease claim was not timely filed under 5 U.S.C. § 8122 as she knew or reasonably should have known that her condition was caused or aggravated by her employment by at least 2006. It found that her claimed Marfan syndrome (connective tissue disorder) was addressed in its December 8, 2006 notice which proposed to terminate her compensation benefits and was finalized in a decision dated January 18, 2007 under File No. xxxxxx086. OWCP also found that appellant's claim for compensation was filed on March 20, 2013. It noted that she stopped work at the employing establishment on January 12, 1989.

³ Prior to the instant claim, appellant filed a traumatic injury claim (Form CA-1) under File No. xxxxxx086 alleging that she sustained left ankle, hip, and neck injuries on May 7, 1985 when she slipped and fell down a full flight of stairs. OWCP accepted the claim for neck, lumbar, left ankle, and left hip strain. It paid total disability compensation. On February 1, 2003 appellant filed a Form CA-1 under File No. xxxxxx103 alleging that she injured her left side, arms, and neck on July 24, 1985 while working on a letter sorter machine. OWCP accepted the claim for cervical and thoracic strain, and left trapezius myositis. The record does not indicate whether OWCP paid any compensation. These claims and the instant claim under File No. xxxxxx021 have been combined into a master claim assigned File No. xxxxxx086.

On July 2, 2013 appellant requested an oral hearing before an OWCP hearing representative and submitted a June 12, 2013 medical report from Dr. Sylvia A. De La Llana, a psychiatrist, who diagnosed connective tissue disease and Marfan syndrome, and opined that these conditions were accelerated and exacerbated by her May 7, 1985 work-related incident.

During a November 22, 2013 telephonic hearing, appellant testified that she began work at the employing establishment in 1979 and after 1980 she sustained a neck injury as a result of an automobile accident. When she returned to work, she constantly told the employing establishment about the neck pain she experienced while at work. Appellant stated that no one instructed her that this was an occupational illness. In 2012 she went to Cedars Sinai Hospital and was tested for Marfan syndrome, but was diagnosed as having a connective tissue disorder. Appellant stated that this was a preexisting condition that was constantly aggravated by her work activities.

In a February 10, 2014 decision, an OWCP hearing representative affirmed the June 27, 2013 denial of appellant's claim as it was untimely filed. The hearing representative found that appellant was able to pursue her prior claims for the same medical conditions claimed in the instant occupational disease claim which were addressed in multiple OWCP decisions and, thus, she should have been capable of timely filing the instant claim. She noted that OWCP's 2007 termination of appellant's compensation benefits under File No. xxxxxx086 was based on the opinion of an impartial medical specialist who found no evidence of any disabling residuals of the accepted work injuries or Marfan syndrome that prevented her from returning to full-duty work and was affirmed by the Board. The hearing representative found that she did not provide a reasonable basis for failing to pursue an occupational disease claim at an earlier date. She resent the decision on May 12, 2014.⁴

LEGAL PRECEDENT

Under FECA, as amended in 1974, a claimant has three years to file a claim for compensation.⁵ In occupational disease claims, the Board has held that the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware of a possible relationship between the condition and her employment.⁶ When an employee becomes aware or reasonably should have been aware that she has a condition which has been adversely affected by factors of her 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 affect would be temporary or permanent.⁷

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

⁴ On May 9, 2014 appellant informed OWCP that she had misplaced the February 2, 2014 decision and that she wished to appeal the decision to the Board.

⁵ *Duet Brinson*, 52 ECAB 168 (2000); *William F. Dorson*, 47 ECAB 253, 257 (1995); *see also* 20 C.F.R. § 10.101(b).

⁶ *See William C. Oakley*, 56 ECAB 519 (2005).

⁷ *Larry E. Young*, 52 ECAB 264 (2001).

aware of the causal relationship between her employment and the compensable disability.⁸ Where the employee continues in the same employment after such awareness, the time limitation begins to run on the date of last exposure to the implicated factors.⁹ The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.¹⁰

Compensation for disability or death may still be allowed even if a claim is not filed within the three-year time frame if appellant can show that: (1) her immediate supervisor had actual knowledge of her alleged employment-related injury within 30 days such that the immediate supervisor was put reasonably on notice of an on-the-job injury; or (2) death or written notice of injury or death as specified in section 8119 was given within 30 days.¹¹ Section 8119 provides that a notice of injury or death shall be given within 30 days after the injury or death, be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed, be in writing; state the name and address of the employee, state the year, month, day and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury or, in the case of death, the employment factors believed to be the cause and be signed by and contain the address of the individual giving the notice.¹² The Board has held that actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.¹³ For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.¹⁴

ANALYSIS

Appellant alleges that she sustained an aggravation of her preexisting connective tissue disorder and neck pain as a result of her employment. OWCP denied her occupational disease claim as untimely. The Board finds that appellant did not file her claim within the applicable time limitation provisions of FECA.

In a Form CA-2, appellant stated that she initially became aware of her claimed conditions on March 18, 2013. She later claimed that she became aware of her conditions on October 26, 2012 when she was diagnosed as having a connective tissue disorder as confirmed by genetic testing at Cedars Sinai Hospital. The time limitations period for filing appellant's occupational disease claim commenced on January 12, 1989 because she continued to work for the employing establishment until this date. Nonetheless, she filed her claim on March 20, 2013, over 24 years after she stopped work. Appellant's purported unfamiliarity with FECA filing

⁸ 5 U.S.C. § 8122(b); *see also Bennie L. McDonald*, 49 ECAB 509, 514 (1998).

⁹ *Id.*; *see also William D. Goldsberry*, 32 ECAB 536, 540 (1981).

¹⁰ *Debra Young Bruce*, 52 ECAB 315 (2001).

¹¹ 5 U.S.C. § 8122(a).

¹² *Id.* at § 8119.

¹³ *Laura L. Harrison*, 52 ECAB 515 (2001).

¹⁴ *Delmont L. Thompson*, 51 ECAB 155 (1999).

requirements did not excuse her untimely filing.¹⁵ In addition, while she testified at the November 22, 2013 telephonic hearing that she constantly told the employing establishment about her neck pain upon her return to work following a 1980 automobile accident in which she sustained a neck injury, the case record does not contain evidence demonstrating that an immediate superior either had actual knowledge of or received written or verbal notification about a neck injury and its relationship to her work within 30 days of its occurrence.¹⁶ The employing establishment stated that appellant first reported her injury to a supervisor on March 27, 2013. The Board finds that appellant did not file a timely 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(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁵ 5 U.S.C. § 8122(d)(3) (exceptional circumstances); *see Ralph L. Dill*, 57 ECAB 248, 253-54 (2005) (ignorance of the law or one's obligations under it does not constitute exceptional circumstances that would otherwise excuse an untimely filing).

¹⁶ *Duet Brinson*, *supra* note 5.