

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

A.R., Appellant	)	
	)	
and	)	<b>Docket No. 24-0385</b>
	)	<b>Issued: May 22, 2024</b>
U.S. POSTAL SERVICE, STRATFORD POST OFFICE, Stratford, CT, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On February 27, 2024 appellant filed a timely appeal from a February 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 has met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

**FACTUAL HISTORY**

On February 24, 2022 appellant, then a 58-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed depression, schizophrenia, hallucination, and delusional thoughts, and heard voices due to factors of her federal employment. She first became aware of her condition on January 2, 2008, and realized its relation to her federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment on March 26, 2018. Appellant related that she was on limited duty when she began to hear voices saying that the Government Observation Department (GOD) was watching her. She then began hearing voices at home, which sounded like her supervisors, and told her they were investigating the postmaster, M.B. Appellant indicated that the voices seemed to follow her everywhere and told her to quit her job. She was embarrassed to tell anyone what was going on, and her mother stepped in when she tried to take her life five times to get away from the voices. On the reverse side of the claim form, an employing establishment supervisor indicated that appellant stopped work on January 16, 2017 and first reported the condition to a supervisor on February 25, 2022.

Appellant submitted evidence, including a July 28, 2021 Form CA-2, originally filed under OWCP File No. xxxxxx049, alleging a psychiatric condition. The employing establishment did not sign or otherwise complete this form.

OWCP received a July 20, 2021 work capacity evaluation (Form OWCP-5c) and July 21, 2021 attending physician's report (Form CA-20) from Dr. Megan Janoff, a Board-certified psychiatrist, who opined that appellant was disabled due to schizoaffective disorder depressive type.

The employing establishment challenged the claim, noting that appellant had resigned on March 26, 2008. Appellant returned to work on November 19, 2016, but was separated from employment, effective January 16, 2017, as a noncareer employee for lack of work.

In a March 14, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the evidence necessary to establish her claim and provided a factual questionnaire for her completion. In a second development letter of even date, OWCP requested that the employing establishment provide additional information. It afforded both parties 30 days to submit the requested evidence.

In an April 5, 2022 letter, the employing establishment noted that it could not comment on whether appellant had auditory hallucinations while being on limited duty because only she could comment on that. It noted that while it did not contest that appellant had a disease or illness, there was no relationship to employment events.

By decision dated April 28, 2022, OWCP denied appellant's occupational disease claim, finding that it was untimely filed pursuant to 5 U.S.C. § 8122(a).

On May 9, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was later converted to a request for a review of the written record.

By decision dated January 4, 2023, OWCP's hearing representative affirmed the April 28, 2022 decision.

On December 26, 2023 appellant requested reconsideration. Evidence submitted included a November 16, 2022 narrative statement wherein appellant recounted instances when she heard voices. She also submitted additional medical evidence dated from November 24, 2010 through March 6, 2023.

By decision dated February 5, 2024, OWCP denied modification of its January 4, 2023 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,<sup>3</sup> that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.<sup>6</sup> In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation, for disability or death must be filed within three years after the injury or death.<sup>7</sup>

In a case of occupational disease, 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 his or her condition and his or her 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.<sup>8</sup> Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.<sup>9</sup> Section 8122(b) of FECA provides that the time for filing in latent disability cases does not begin to run until the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal

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<sup>2</sup> *Id.*

<sup>3</sup> *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.S.*, *id.*; *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *L.S.*, *id.*; *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

<sup>7</sup> 5 U.S.C. § 8122(a); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

<sup>8</sup> *M.B.*, *supra* note 6; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

<sup>9</sup> *Id.*

relationship between the employment and the compensable disability.<sup>10</sup> It is the employee's burden to establish that a claim is timely filed.<sup>11</sup>

Even if a claim is not 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 alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.<sup>12</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>13</sup> An employee must show not only that his or her 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.<sup>14</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

Appellant filed her occupational disease claim on February 24, 2022. She indicated that she became aware of her condition on January 2, 2008 and realized its relation to her federal employment on March 26, 2018. As noted under section 8122(b), the time limitation begins to run when the employee becomes aware of causal relationship, or if she continued to be exposed to employment factors after awareness, the date she is no longer exposed to such factors. As more than three years elapsed from March 26, 2018 until appellant filed her claim on February 24, 2022, the Board finds that the claim was untimely filed.<sup>15</sup>

The Board notes that appellant submitted a July 28, 2021 Form CA-2 for psychiatric conditions which was originally placed in OWCP File No. xxxxxx049. This claim form was not completed by the employing establishment and was also not filed by March 26, 2021.

The Board further finds that there is no evidence of record that appellant's immediate supervisor, had actual knowledge within 30 days of the alleged injury.<sup>16</sup> There is no evidence that

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<sup>10</sup> 5 U.S.C. § 8122(b).

<sup>11</sup> *M.B.*, *supra* note 6; *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

<sup>12</sup> 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); 8119(a), (c); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3a(3) (March 1993); *see J.S.*, Docket No. 22-0347 (issued September 16, 2022); *see also Larry E. Young*, *supra* note 8.

<sup>13</sup> *S.O.*, *supra* note 8; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

<sup>14</sup> *L.G.*, Docket No. 16-0535 (issued February 6, 2017); *Charlene B. Fenton*, 36 ECAB 151 (1984).

<sup>15</sup> *See T.P.*, Docket Nos 23-0691 and 24-0176 (issued January 11, 2024); *L.S.*, Docket No. 20-0705 (January 27, 2021); *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *J.M.*, Docket No. 10-1965 (issued May 16, 2011); *Larry E. Young*, *supra* note 8.

<sup>16</sup> 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also T.P.*, *id.*; *Larry E. Young*, *supra* note 8.

an official at the employing establishment had actual or constructive knowledge that appellant related her psychiatric condition to a factor of employment within 30 days of occurrence.<sup>17</sup>

The Board finds that appellant has not established that her claim was timely filed.

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 has not met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2024  
Washington, DC

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>17</sup> See *Roseanne S. Allexenberg*, 47 ECAB 498 (1996) (knowledge of an employee's illness is not sufficient to establish actual knowledge and timeliness of a claim, it must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it thereto).