

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DELMONT L. THOMPSON and DEPARTMENT OF THE NAVY,  
CHARLESTON NAVAL SHIPYARD, Charleston, SC

*Docket No. 97-988; Submitted on the Record;  
Issued November 1, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's compensation claim on the grounds that his claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act; and (2) whether the Office's denial of appellant's request for a hearing pursuant to section 8124 of the Act constituted an abuse of discretion.

On March 16, 1996 appellant, then a retired engineer technician, filed an occupational disease claim, alleging that he sustained depression, panic anxiety and memory loss that began and he first realized was related to factors of his federal employment on November 15, 1990. Appellant indicated that his claimed conditions were due to harassment by a supervisor and coworker, who gave him impossible assignments, harassed him and sent him to the Civilian Employee Assistance Program (CEAP) for his condition. Appellant retired on November 30, 1990 but worked as a reemployed annuitant through January 18, 1991. In a supplemental statement appellant indicated that he believed he was subjected to harassment due his permanent disability status from a separate work-related injury.<sup>1</sup> On March 15, 1996 appellant also filed a claim for a schedule award for the period of February 1, 1991 through March 16, 1996.

The employing establishment controverted appellant's claim, asserting that it was not timely filed and not supported by evidence.

---

<sup>1</sup> A review of the record indicates that appellant sustained a injury on November 11, 1979 and filed a claim which the Office accepted for fracture of the sacrum. Appellant returned to work on light duty on June 25, 1980, but stopped work immediately upon his return and filed a claim for recurrence of disability . The Office approved this claim and appellant received compensation for temporary total disability through October 6, 1981. On June 5, 1986 and August 18, 1988, appellant filed additional claims for recurrence of disability beginning June 3, 1986 and May 6, 1988. The Office rejected these claims.

In a decision dated August 2, 1996, the Office denied appellant's claim on the grounds that it was not timely filed within three years of the date of last exposure when appellant should have been reasonably aware of a relationship between the employment and the claimed condition. In a letter decision dated November 27, 1996, the Office denied appellant's request for a hearing pursuant to section 8124 of the Act.

The Board has carefully reviewed the case record on appeal and finds that appellant's compensation claim for an occupational disease was not filed within the applicable time limitation provisions of the Act.

In cases of injury on or after September 7, 1974, section 8122(a) of the Act<sup>2</sup> provides that a claim for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that the time for filing in latent disability cases, as in this case, 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 his employment and the compensable disability.<sup>3</sup> The Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.<sup>4</sup> The statute provides an exception that a claim may be regarded as timely if an immediate superior had actual knowledge of the injury within 30 days such that the immediate superior was put reasonably on notice of an on-the-job injury or death.<sup>5</sup>

In the instant case, appellant indicated that he was first aware of his condition and its relation to factors of his federal employment on November 15, 1990. Subsequently, appellant indicates that the employing establishment had actual knowledge of his condition as evidence by his referral to CEAP in April 1988. An office note by Claude Williams, a CEAP counselor, dated April 1, 1988, indicates that appellant was referred to him by his supervisor because he was emotionally upset by a coworker. The Board has previously indicated that when a claimant seeks treatment at an employing establishment 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. However, in this case, appellant did not seek treatment from the employing establishment's health unit, which would have readily provided appellant's supervisor with copies of his health records upon request. Rather, appellant sought treatment with CEAP which has regulations regarding privacy mandates and which is an entity that is not under the control of the employing establishment, unlike a health unit. Thus, while appellant did seek assistance from CEAP in April 1988, his treatment with this entity cannot be deemed to have imputed actual knowledge to his supervisor. Moreover, appellant indicated that he was first aware of his condition on November 15, 1990. Pursuant to section 8122(b) of the Act, appellant's claim which was filed on March 16, 1996 is not timely filed within three years after the indicated date of injury or within three years of the date of last exposure, November 30, 1990, when appellant retired.

---

<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(b); *see* 20 C.F.R. § 10.105(c).

<sup>4</sup> *Edward Lewis Maslowski*, 42 ECAB 839 (1991).

<sup>5</sup> *Wanda H. Rheal*, 46 ECAB 352 (1994).

Therefore, the Office properly denied appellant's claim on the grounds that it was not timely filed within three years of when appellant should have been reasonably aware of the relationship between his employment and his claimed condition, especially as appellant admitted that he was aware of this causal relationship on November 15, 1990.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides that a "claimant for compensation not satisfied with the decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."<sup>6</sup> As section 8124(b)(1) is unequivocal in setting forth the time limitations for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.<sup>7</sup>

In this case, the Office issued its decision denying appellant's claim on August 2, 1996. Appellant requested a hearing in this matter on October 31, 1996. As appellant's request for a hearing was not within 30 days of the Office's decision, he is not entitled to a hearing under section 8124 as a matter of right.

Nonetheless, even when the hearing request is not timely, the Office has discretion to grant the hearing request and must exercise that discretion. In this case, the Office advised appellant that it considered his request in relation to the issue involved and the hearing was denied on the basis that he could address this issue by submitting evidence which showed that he had filed his claim in a timely manner. Appellant was advised that he may request reconsideration with additional evidence. The Board has held that an abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>8</sup> There is no evidence of an abuse of discretion in the denial of a hearing in this case.

---

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> *Charles J. Prudencio*, 41 ECAB 499 (1990); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>8</sup> *Daniel J. Perea*, 42 ECAB 214 (1990).

The decisions of the Office of Workers' Compensation Programs dated November 27 and August 2, 1996 are hereby affirmed.

Dated, Washington, D.C.  
November 1, 1999

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member