

File Number:
HR11-D-H

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Date of Injury:
Employee:

Dear

This is in reference to your workers' compensation claim. Pursuant to your request for a hearing, the case file was transferred to the Branch of Hearings and Review.

A preliminary review has been completed, and it has been determined that the case is not in posture for a hearing at this time. The decision of the District Office has been vacated and returned to the district office for further action as explained in the attached Remand Order.

Your case file has been returned to the Philadelphia District Office. You may contact that office by writing to our Central Mail Room at the following address:

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Sincerely,

Division of Federal Employees' Compensation

PAUL H FELSER
FELSER LAW FIRM PC
7393 HODGSON MEMORIAL DRIVE
SUITE 102
SAVANNAH, GA 31406

If you have a disability and are in need of communication assistance (such as alternate formats or sign language interpretation), accommodation(s) and/or modification(s), please contact OWCP.

Washington DC, May 01, 2020

U. S. DEPARTMENT OF LABOR
Office of Workers' Compensation Programs

DECISION OF THE HEARING REPRESENTATIVE

*In the matter of the claim for compensation under Title 5, U. S. Code 8101 et seq. of
claimant, employed by the _____ case number*

*Merit consideration of the case was completed in Washington D.C. Based on this review, the
decision of the district office dated _____ is set aside for the reasons set forth below.*

The issue is whether the claimant's extended occupational disease claim was untimely filed under 5 U.S.C. § 8122.

The claimant was employed as a _____ with the _____
On _____, she signed a CA2 Notice of Occupational Disease form claiming depression with physical body pain, anxiety, panic attacks, and chest pain, which she attributed to being targeted for harassment and hostile treatment by her then immediate supervisor, _____ after she was hired to be the lead IT specialist for HQ AF A5/8E. The employing agency signed the CA2 form on _____. The claimant indicated she first became aware of her condition on _____ and realized it was caused or aggravated by her employment on _____. The employing agency reported that _____, was the date the claimant was last exposed to conditions alleged to have caused the disease or illness, and that she stopped work that date.

On _____ the Office issued the claimant a development letter requesting specific factual information, including evidence to show the claim was timely filed within three years from the date of injury, when she first became aware of a relationship between her condition and employment. She was also requested to submit a narrative medical report in support of the claim.

By decision dated _____ the Office denied the occupational disease claim under 5 U.S.C. § 8122, finding it was not filed in a timely manner as required by the Federal Employees' Compensation Act. Specifically, the Office found the evidence did not support that the claim was filed within three years of the date of injury or that her immediate supervisor had actual knowledge within thirty days of the date of injury. It was noted the date of injury was _____ and the claim was filed _____.¹ The claimant disagreed with this decision and by letter postmarked _____, through her attorney, requested an oral hearing.

Based on my preliminary review of the evidence of record, the case is not in posture for hearing and the _____ decision is set aside for the reasons set forth below.

¹ The employing agency signed the CA2 form on _____

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.² Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless: (1) the immediate supervisor had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death; or (2) written notice of injury or death as specified in section 8119 was given within 30 days.

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 condition and his employment. When an employee becomes aware or reasonably should have been aware that he 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 he does not know the nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.³ Where the employee continues in the same employment after such awareness, the time limitation begins to run on the date of his last exposure to the implicated factors.⁴

In the instant case, the Office denied the claim as untimely based on the date of injury identified by the claimant on the CA2 form, as to when she first became aware of disease or illness. However, the issue in this case is the date of last exposure to implicated employment factors. Based on my cursory review of the claimant's statements, she claimed a period of exposure while working from approximately . For example, one of the alleged incidents regarding her appraisal was reported to having occurred on . The employing agency also reported the date of last exposure was . These dates in alone would be within the three year time period from when the claimant filed her CA2 form. The claimant is not claiming latent disability or a condition that arose well after her employment exposure.⁵ As the date of last exposure to implicated factors was in at least , the claim would be timely filed per 5 U.S.C. § 8122.

As the decision only addressed the element of being timely filed, the claim is remanded to the district office to move forward with addressing the next basic elements in a hierarchical manner to determine whether each have been established after review of all evidence in the case record. When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship.⁶

² 5 U.S.C. § 8122(a).

³ *Larry E. Young*, 52 ECAB 264 (2001); *Duet Brinson*, *supra* note 3.

⁴ *Larry E. Young*, *id.*

⁵ Section 8122(b) provides that, in a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment. In such a case, the time for giving notice of injury begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether or not there is a compensable disability.

⁶ *Barbara Bush*, 38 ECAB 710 (1982).

Per FECA *Procedure Manual* Chapter 2-1401.6, regarding writing decisions for emotional conditions, the claims examiner (CE) is directed to first determine whether the situations alleged actually existed or occurred. The CE will then need to distinguish between those workplace activities and circumstances which are factors of employment and those which are outside the scope of employment for purposes of compensation, outlining work-related and non-work-related elements into three parts, labeled as: (1) Accepted Events that are Factors of Employment; (2) Accepted Events that are Not Factors of Employment; and (3) Incidents Alleged which the Office Finds Did Not Occur.

On remand, the Office should carefully consider the factual evidence that has been presented and make proper findings of fact as explained above. If a compensable factor of employment is established, the Office should move forward with review of the medical evidence per its procedures. After any other development deemed necessary, a *de novo* decision should be issued.

Accordingly, the decision dated _____ decision is hereby set aside and the case is returned to the district office for further action as discussed.

ISSUED

WASHINGTON, D.C.

Hearing Representative
Branch of Hearings and Review
For
Director, Office of Workers'
Compensation Programs

Washington DC, May 01, 2020