

SECTION 30

Digests

Section 30(a) and (f)

The administrative law judge's method of imputing knowledge of a work-related injury for purposes of tolling the running of the Section 13 limitations period pursuant to Section 30(f) based on claimant's application for non-occupational health and disability insurance benefits is error. The record does not indicate that employer knew or should have known the injury occurred in its parking lot. The case is remanded for reconsideration of whether the claim was timely filed within one year of the date of awareness of the relationship between the injury and employment. *Alston v. Safeway Stores, Inc.*, 19 BRBS 86 (1986).

The D.C. Circuit holds that where an employer has not been put on notice that its employee's respiratory ailments could be work-related, its failure to file a Section 30(a) report of injury, does not serve to toll the Section 13(a) limitations period pursuant to Section 30(f). The court determines that even though employer began to require that employees wear breathing masks, and had knowledge of the claimant's respiratory problems, these considerations were insufficient to put employer on notice that claimant's difficulties could be work-related. Employer's failure to file a Section 30(a) report of injury therefore did not toll the Section 13(a) limitations period. *Stark v. Washington Star Co.*, 833 F.2d 1025, 20 BRBS 40 (CRT)(D.C. Cir. 1987).

The Board held that once employer filed an initial Section 30(a) report of an accidental knee injury in 1975, employer did not need to file additional reports for purposes of Section 30(f) when it was informed of possible sequelae of the work injury. Thus, employer's failure to file its first report of injury until 1982 based on claimant's allegations of chronic synovitis in 1978 did not serve to toll the Section 13 limitations period pursuant to Section 30(f). *Gencarelle v. General Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989).

The Second Circuit affirmed the Board's decision that, for purposes of tolling the Section 13 statute of limitations, employer need not file a separate Section 30(a) report at every stage of a developing injury, and that the initial report of injury suffices to prevent the tolling of the statute of limitations as to the sequelae of the initial injury. *Gencarelle v. General Dynamics Corp.*, 892 F.2d 173, 23 BRBS 13 (CRT) (2d Cir. 1989), *aff'g* 22 BRBS 170 (1989).

The right to disability benefits survives the employee's death, and as employer never filed a Section 30(a) report for the employee's injury, the Board reverses the administrative law judge's finding that the disability claim was untimely filed under Section 13. *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989).

The Board held that the administrative law judge rationally concluded that employer complied with the requirements of Section 30(a) where employer claimed to have sent an injury report to the deputy commissioner at the same time that it sent a copy of the report to its carrier, the record contained a photocopy of the copy sent to the carrier with a timely date stamped with the carrier's stamp, and there was testimony that the report sent to the deputy commissioner could have been destroyed. Therefore, the Board affirmed the finding that the Section 13(a) limitations period was not tolled under Section 30(f). *Aurelio v. Louisiana Stevedores, Inc.*, 22 BRBS 418 (1989), *aff'd mem.*, No. 90-4135 (5th Cir. Mar. 5, 1991).

The Board remands the case for the administrative law judge to determine if employer complied with the requirements of Section 30(a) by filing a Form LS-202bT, a "no time lost log," rather than a Form LS-202 for a time lost injury, where claimant alleges that his back injury was much more serious than a "no time lost injury" and ultimately required surgery. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201, *vacated on other grounds on recon.*, 24 BRBS 63 (1990).

The Board restates its holding in *Keatts*, 14 BRBS 605 (1982), that Section 30(f) cannot be used to save a claim where claimant had knowledge of the work-relatedness of his injury, but employer did not receive notice, or otherwise obtain knowledge, by the end of the relevant filing period. Since claimant was "aware" for over two years before employer had notice, Section 30(f) does not toll the statute of limitations. *Wendler v. American Red Cross*, 23 BRBS 408 (1990)(McGranery, J., dissenting).

Where claimant entered into a settlement with employer in which employer agreed to pay claimant \$54,420 in exchange for a release of liability for a work, and later filed a claim for benefits under the Act, the Section 13(a) statute of limitations was tolled pursuant to Section 30(f) because employer failed to file a timely First Report of Injury. Application of Section 30(f) does not require that employer have definite knowledge that the injury comes within the jurisdiction of the Act and the fact that the case may arise under a statute other than the Act (in this case the Jones Act) does not excuse employer's failure to file the Section 30(a) report. *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990).

Application of Section 30(f) does not require that employer have definite knowledge that the injury comes within the jurisdiction of the Act, and the fact that the case may arise under a statute other than the Act (in this case the state act) does not excuse employer's failure to file a Section 30(a) report. As employer had knowledge of the injury and did not file a Section 30(a) report until after claimant filed a claim under the Act, the Board affirms the administrative law judge's finding that the statute of limitations was tolled and that the claim was timely filed. *Spear v. General Dynamics Corp.*, 25 BRBS 132 (1991).

Under the facts of this case, the Board affirms the administrative law judge's finding that claimant's contacts with employer's agent, PMA, were sufficient to impute to employer knowledge of a work injury for which compensation liability was possible. Employer did not dispute that PMA is its agent, see *Derocher*, 17 BRBS 249 (1985). Since PMA had knowledge of the injury, and employer failed to file a Section 30(a) report, the Section 13 statute of limitations was tolled pursuant to Section 30(f), and employer failed to overcome the Section 20(b) presumption. *Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991).

Where claimant had not yet lost any time due to his work injury at the time employer completed its LS-202 form, the Board, relying on the Preamble to the Final Rules Implementing the 1984 Amendments and a February 13, 1986 Departmental Notice to employers and carriers, held that the form was not sufficient to satisfy to requirements of Section 30(a) and to start the Section 13(a) time limitations running. If an injury does not result in lost time, employer is not required to file a report and the filing of a report does not cause the time limitation to commence. Since employer's LS-202 failed to specify any loss of time from work, as none had yet occurred and employer did not amend its form or file a new one, the Board reversed the administrative law judge's finding that employer satisfied the requirements of Section 30(a). Because employer's failure to comply with Section 30(a) tolls the Section 13(a) filing limitation, the Board reversed the administrative law judge's finding that the claim was barred under Section 13. *Nelson v. Stevens Shipping & Terminal Co.*, 25 BRBS 277 (1992) (Dolder, J., dissenting).

The Board reversed the administrative law judge's finding that the death benefits claim was timely filed in this asbestosis case after holding that employer's lack of knowledge rebutted the Section 20(b) presumption as a matter of law. In the instant case, employer did not have knowledge of decedent's work-related death before the claim was filed in 1992, well after the limitations period expired in May 1989. Therefore, employer's failure to file a Section 30(a) report cannot toll the statute of limitations as the claim was already time-barred by the time employer gained knowledge of the injury or death. *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), *rev'd in part sub nom. Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114 (CRT)(2d Cir. 1999).

The Second Circuit reversed the Board's holding in *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), that the death benefits claim was not timely filed, holding that employer and carrier did not rebut the Section 20(b) presumption. The court held that the carrier's controversion indicating that the date employer learned of the decedent's death was "unknown" was insufficient to rebut the presumption as it does not indicate that employer lacked knowledge of the decedent's work-related death before the claim was filed in 1992, and as there is no evidence in the record indicating when the carrier learned of the decedent's death. The court also held that claimant's returned claim form (undeliverable by the post office) did not constitute substantial evidence that employer lacked knowledge of the decedent's work-related death before 1992, and that the carrier presented no evidence that it lacked knowledge of the decedent's work-related death prior to 1992. Lastly, the court held that employer and carrier's failure to file a Section 30(a) report tolled the statute of limitations under Section 30(f). Thus, the court reinstated the administrative law judge's award of death benefits *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT)(2d Cir. 1999), *rev'g in part* 32 BRBS 174 (1998).

The Board affirmed the administrative law judge's finding that the information contained in a medical report and letter from claimant's counsel was sufficient to impute to employer knowledge that claimant suffered from a work-related respiratory impairment for which compensation liability was possible. Because employer's failure to timely file a Section 30(a) report tolls the Section 13(a) statute of limitations, the Board affirmed the administrative law judge's finding that the claim was timely filed. *Bustillo v. Southwest Marine, Inc.*, 33 BRBS 15 (1999).

Section 30(e)

The Board dismisses the appeal of an assistant deputy commissioner's Order for lack of jurisdiction, reasoning that review of the assistant deputy commissioner's assessment of a Section 30(e) penalty will involve factual determinations and that the case thus should be referred to an administrative law judge rather than be appealed to the Board. *Anweiler v. Avondale Shipyards, Inc.*, 21 BRBS 271 (1988).