U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DUET BRINSON and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

Docket No. 00-94; Submitted on the Record;
Issued December 13, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant's claim for an occupational disease is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

On August 21, 1997 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on February 8, 1985 he became aware that he had developed a skin condition caused or aggravated by his exposure to polychlorinated biphenyl (PCB) while "burning out" a missile compartment of a submarine. On the reverse side of the form, the employing establishment indicated that exposure was ongoing.

By decision dated October 2, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the basis that he had failed to timely file his claim.

Appellant requested a hearing before an Office representative in a letter dated December 7, 1997.

In a decision dated June 25, 1998, the hearing representative vacated the October 2, 1997 decision and remanded the claim to the Office. The hearing representative noted that appellant indicated that he had continued exposure to PCB's from November 1992 through March 1994 which required further development to determine whether appellant had timely filed his claim. On remand the Office was instructed to obtain additional information with regard to appellant's exposure to PCB's and then issue a *de novo* decision.

In a letter dated September 25, 1998, the employing establishment stated that appellant "would routinely have been exposed to 'light' levels of exposure to PCB's in the performance of his full duties as a shopfitter," but that he had been on limited duty since 1994 due to a knee condition such that he worked in the shop and other shipyard locations where exposure to PCB's would be nonexistent. The employing establishment noted that "the only PCB exposure he

might have had was shipboard or in the 'cut-ups' (*i.e.*, recycle). He has been assigned to neither shipboard work nor recycle work since prior to 1994."

By decision dated October 1, 1998, the Office denied appellant's claim on the grounds that it was not timely filed. The Office noted that his last exposure to PCB's had occurred prior to 1994 and that he filed his claim on August 21, 1997.

By letter dated October 30, 1998, appellant requested a hearing and submitted a report from 1985 indicating exposure to PCB's and a February 2, 1985 treatment note from the dispensary.

A hearing was held on April 26, 1999 at which appellant had appeared and testified. He addressed his work assignment in 1984 which exposed him to PCB and noted that in 1985 he developed acne pimples which burst and turned into keloids which grew. Appellant indicated that he had been exposed to Agent Orange while stationed in Vietnam and that his physician had told him that his skin condition could be due to the combination of Agent Orange and PCB exposure.

Subsequent to the hearing appellant submitted additional medical and factual evidence by letter dated May 11, 1999 including a February 20, 1985 report on potential exposure to PCB, various medical reports from 1985 to 1997, statements by appellant dated March 9 and April 18, 1994 regarding exposure, an April 24, 1994 statement by William T. Bakke, a Shop-11 foreman, who stated that he signed a dispensary slip in February 1985 for appellant to confirm exposure to PCB following appellant's temporary assignment to dismantle missile compartments in August 1984. Mr. Bakke stated that appellant was exposed to PCB oil and that employees, including appellant, were directed to the dispensary to document their exposure. Mr. Bakke noted appellant continued working on dismantlement for several months and that he performed a substantial amount of "burning." Statements from other individuals confirming appellant's exposure to PCB in1985 were submitted.

By decision dated August 2, 1999 and finalized on August 13, 1999, the hearing representative affirmed the October 1, 1998 decision finding that appellant had failed to timely file his claim.

The Board finds that appellant's compensation claim for occupational disease is not barred by the applicable time limitation provisions of the Act.

Under the Act,[1] as amended in 1974, a claimant has three years to file a claim for compensation.[2] Section 8122(a) provides that "an original claim for compensation for disability or death must be filed within three years after the injury or death."[3] In a case of occupational disease, the Board has held that the time for filing a claim begins to run when the employee first

[1] 5 U.S.C. § 8122.

[2] *William F. Dotson*, 47 ECAB 253, 257 (1995).

[3] *Id.*

becomes aware, or reasonably should have been aware, of a possible relationship between his condition and his employment.[4] 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 precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.[5]

In this case, appellant filed a claim for compensation on August 21, 1997 alleging that on February 8, 1985 he became aware that he had developed a skin condition caused or aggravated by his exposure to PCB in his federal employment. In addition, the record contains evidence that appellant's last exposure to PCB was prior to 1994 as he was placed in a limited-duty position at the shop and other shipyard locations where exposure would be nonexistent. Since appellant did not file his claim for compensation until August 21, 1997, he is clearly outside the three-year time limitation period and his claim is therefore untimely.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of his alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.[6] An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[7] In the instant case, appellant's supervisor, Mr. Bakke submitted an April 29, 1994 statement indicating that he had knowledge of appellant's exposure to PCB throughout late 1984 and issued him a dispensary note by February 1985 for appellant to confirm exposure to PCB. The Board notes that Mr. Bakke's statement establishes that appellant's immediate supervisor had actual knowledge of injury. Consequently, the exception to the statute is met, and appellant's claim for compensation is timely.

---

[4] *Leo Ferraro*, 47 ECAB 350, 356 (1996).

[5] *Id*. at 357.

[6] 5 U.S.C. § 8122(a)(1); *see also Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987).

[7] *Charlene B. Fenton*, 36 ECAB 151 (1984).

The decision of the Office of Workers' Compensation Programs dated August 2, 1998 and finalized on August 13, 1999 is reversed and the case remanded for further action on the merits of appellant's claim.

Dated, Washington, DC
December 13, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member