

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BETTY J. TUCKER and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, CA

*Docket No. 03-2097; Submitted on the Record;  
Issued November 24, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's compensation claim on the grounds that her claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

On February 28, 2003 appellant, a 55-year-old video coding technician, filed a Form CA-2 claim for benefits based on a bilateral meniscus (knee) condition. Appellant claimed she first became aware that this condition was caused or aggravated by her employment on April 12, 2000 and that she first reported it to her supervisor on February 28, 2003.

By decision dated July 9, 2003, the Office denied appellant's claim for an occupational disease or condition on the grounds that her claim was not timely filed under section 8122.<sup>1</sup> The Office stated that appellant was aware, or reasonably should have been aware of a relationship between employment factors and the claimed condition by April 12, 1997, the claimed date of injury, but that written notice of the injury was not provided until February 28, 2003. The Office noted that appellant had previously filed a Form CA-2, occupational disease claim seeking compensation for an alleged bilateral meniscus condition, in addition to compensation for alleged shoulder impingement, chronic upper arm, cervical and lumbar strain conditions on September 9, 1999. The Office stated that this claim, #13-1201984, had been denied by the Office on February 3, 2000 due to insufficient medical evidence.<sup>2</sup> The Office therefore found that appellant's claim was a duplicate claim in addition to being filed in an untimely manner.

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<sup>1</sup> 5 U.S.C. § 8122.

<sup>2</sup> The Office noted that a claim for a left knee condition, #13-1162405, was denied on June 9, 1998; a claim for a left knee injury consequential to an accepted wrist condition, #13-1117737, was denied on February 19, 1999 and affirmed in a decision by an Office hearing representative on October 7, 2002. This consequential claim is included in the instant record.

The Board finds that the Office properly denied appellant's compensation claim for an occupational disease or condition on the grounds that her claim was not filed within the applicable time limitation provisions of the Act.

Section 8122(a) of the Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>3</sup> Section 8122(b) provides that, in latent disability cases, the time limitation 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 her employment and the compensable disability.<sup>4</sup> The statute provides an exception, which states that a claim may be regarded timely if an immediate superior had actual knowledge of the injury 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.<sup>5</sup>

In the instant case, appellant stated on her February 28, 2003 Form CA-2 that she became aware that her claimed bilateral meniscus condition was causally related to her employment on April 12, 2000. This statement, however, is contradicted by appellant's September 9, 1999 Form CA-2, on which she stated that she had a bilateral meniscus condition which she first became aware was caused or aggravated by her employment on April 12, 1997.<sup>6</sup> With regard to the instant case, appellant filed an occupational disease claim on February 28, 2003, which was six years after she previously claimed to have become aware that her alleged bilateral knee condition was caused or aggravated by her employment. This is well beyond the three-year time limitation set forth in the statute. The Board therefore finds that the Office properly denied appellant's compensation claim on the grounds that her claim was not filed within the applicable time limitation provisions.

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<sup>3</sup> 5 U.S.C. § 8122(a).

<sup>4</sup> 5 U.S.C. § 8122(b).

<sup>5</sup> 5 U.S.C. § 8122(a)(1); *see Eddie L. Morgan*, 45 ECAB 600 (1994); *Jose Sales*, 41 ECAB 743 (1990).

<sup>6</sup> The evidence of record indicates that appellant filed two other claims claiming compensation for the same condition. Further, appellant was off work from April 1997 until October 2002, when she was reemployed in the video coding unit. Therefore, she could not have been exposed to any additional factors of employment which could have caused or aggravated her alleged bilateral meniscus condition.

The decision of the Office of Workers' Compensation Programs dated July 9, 2003 is hereby affirmed.

Dated, Washington, DC  
November 24, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member