

<sup>1</sup> The Board notes that on appeal appellant contends that she is appealing an Office decision dated February 25, 2003. The record, however, does not contain a February 25, 2003 decision. Rather, the record reveals that appellant's hearing before the Office hearing representative took place on February 25, 2003 and a decision was issued on July 1, 2003.

### **FACTUAL HISTORY**

On January 18, 2002 appellant, then a 46-year-old industrial engineering technician, filed an occupational disease claim alleging that on November 3, 2000 she first realized that her multiple myeloma was caused by factors of her federal employment. Appellant stated that she was the technician for the atomic clock/master and she regulated clocks. Appellant further stated that these clocks used cesium beams that were being degaussed, which created leaks. She indicated that her physicians could not diagnose her illness until she started breaking bones. Appellant did not file her claim within 30 days after realizing on November 3, 2000 that her multiple myeloma was work related because she was too ill in November and December 2000, to file her claim. Appellant indicated that she was in a nursing home for over eight months from November 2000 to August 2001. Appellant stated: "I did not know where I could file for a health problem." On the reverse of the form, Ronald D. Parsons, an employing establishment supervisor, indicated that appellant separated from the employing establishment on September 30, 1996 due to a reduction-in-force.

In support of her claim, appellant submitted literature regarding exposure to Toulene, a hazardous liquid substance, cesium, a nonradioactive substance and Freon, a compound. She also submitted employment records and correspondence from the employing establishment regarding an investigation of her exposure to radioactive material. In addition, appellant submitted radiological, computerized tomography and laboratory reports and medical reports from Board-certified internists, Dr. Jacqueline Jones and Dr. Cameron Woodlief, Board-certified orthopedic surgeons, Dr. Edward L. Westerheide, Dr. David M. Jackson, Dr. John D. Quimjian and Dr. Henry D. Rocco and a Board-certified radiologist, Dr. Lawrence Berk.

By letter dated March 18, 2002, the Office requested that appellant submit additional factual and medical evidence supportive of her claim.

In response, appellant submitted employment records. She also submitted statements indicating that she stored atomic clocks under her desk in 1983. Appellant stated that from 1981 until 1996 she was exposed to a cesium beam tube for 8 to 14 hours a day up to 6 days a week. Appellant described how the clocks were degaussed and how gas leaked from the cesium beam tubes. She provided a layout of her work area. She indicated that a coworker, John Eckstein, had the same illness at approximately the same time and subsequently died based on an accompanying letter from his widow, Barbara A. Eckstein. Appellant submitted literature regarding radiation and cesium, a March 27, 2002 decision of the Department of Labor denying her claim for compensation benefits under the Energy Employees' Occupational Illness Program Act as she was not employed at a covered facility as defined in 42 U.S.C. § 73841(5)(6) and correspondence with the United States Nuclear Regulatory Commission concerning her work with atomic clocks. Appellant also submitted medical reports regarding her multiple myeloma and her cervical, back, eye, ear, allergy, toe, knee, foot, obesity, heart disease, diabetes and asthma conditions.

In a decision dated April 30, 2002, the Office denied appellant's claim on the grounds that it was not timely filed. The Office found that appellant's last federal employment exposure occurred on September 30, 1996. The Office also found that the medical evidence of record did

not establish a work-related condition and the factual evidence did not establish that the cesium beams were radioactive in nature.

Appellant requested an oral hearing before an Office hearing representative in an undated letter received by the Office on May 29, 2002. Subsequent to the February 25, 2003 hearing, appellant submitted corrected copies of the hearing transcript. She also submitted a statement from James P. Heinmiller, her former supervisor at the employing establishment, regarding her physical ailments on or before June 1, 1996, medical reports and a disability certificate regarding her myeloma, literature regarding myeloma and atomic clocks, a statement regarding the onset of her disease, her comments about the Office's April 30, 2002 decision and a March 21, 2003 statement from Judy L. Beyers, a coworker, indicating that she took her to the emergency room on at least two occasions.

By decision dated July 1, 2003, the Office affirmed the hearing representative's April 30, 2002 decision.

### **LEGAL PRECEDENT**

In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act states that "an original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>2</sup> Section 8122(b) of the Act 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 the employment and the compensable disability.<sup>3</sup> The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.<sup>4</sup>

### **ANALYSIS**

In this case, the Office denied appellant's occupational disease claim on the grounds that it was not timely filed. Appellant indicated on her Form CA-2 that she first became aware that her multiple myeloma was caused by her employment on November 3, 2000. She stated that she was exposed to cesium beams, which were radioactive in nature. Appellant stopped work at the employing establishment on September 30, 1996 due to a reduction-in-force and thus, ceased to be exposed to the implicated employment conditions by that date.

In the instant case, the Office found that appellant should have been aware of a relationship between her employment and the alleged condition by September 30, 1996, the date of her last exposure to the implicated employment condition. However, the record reflects that appellant did not become aware of a relationship between her multiple myeloma and radiation exposure at the employing establishment until November 2000. Appellant was first diagnosed in November 2000 with multiple myeloma. A November 16, 2000 radiological report of

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<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(b).

<sup>4</sup> *Garylean A. Williams*, 44 ECAB 441 (1993).

Dr. Joseph E. Fondriest, a Board-certified radiologist, revealed a diagnosis of multiple lytic lesions of the frontal and sphenoid bones consistent with the history of multiple myeloma. A November 24, 2000 hospital discharge summary report of Dr. Westerheide, revealed that appellant was admitted to the hospital on November 6, 2000, due to a status post fall with pain and inability to bear weight on the bilateral lower extremities. Dr. Westerheide noted his findings on physical examination, a review of laboratory reports and clinical course. He diagnosed among other things, widespread multiple myeloma with pathological fractures of the right supracondylar femur, bilateral proximal tibias and visual disturbance of the left eye secondary to myeloma.<sup>5</sup> In a 2000 report of which the exact date is unclear, Dr. Westerheide diagnosed among other things metastatic multiple myeloma throughout the entire skeleton.<sup>6</sup>

There is no evidence that the multiple myeloma existed prior to November 2000 or that appellant was aware of the condition prior to November 3, 2000. As the record reflects that the multiple myeloma was diagnosed in November 2000, the date of diagnosis, the Board finds that the evidence of record is insufficient to establish that appellant was aware or reasonably should have been aware of her condition prior to the date she states in her claim, *i.e.*, November 3, 2000. Moreover, the Office has not explained why it determined that appellant should have been aware of an employment-related condition at a date earlier than November 2000. Accordingly, since appellant filed the claim on January 18, 2002 she is clearly inside the three-year limitation period and her claim is, therefore, timely.<sup>7</sup>

### **CONCLUSION**

The Board finds that the Office improperly denied appellant's occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

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<sup>5</sup> The record reveals that on November 9, 2000 appellant underwent a left fibula shaft segmental resection of a tumor for biopsy, which was performed by Dr. Westerheide.

<sup>6</sup> The Board notes that it appears Dr. Westerheide's report may be dated December 21, 2000.

<sup>7</sup> Both the Office's April 30, 2002 and July 1, 2003 decisions find that appellant "should reasonably have been aware of the relationship between the employment and the claimed condition by September 30, 1999." The January 18, 2002 claim was filed within three years of this date.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 1, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development of the claim.

Issued: February 5, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
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