United States Department of Labor
Employees' Compensation Appeals Board

JERRY WATSON, Appellant	)	
and	)	**Docket No. 04-332**
	)	**Issued: March 10, 2004**
DEPARTMENT OF DEFENSE, CHARLESTON AIR FORCE BASE, SC, Employer	)	

Appearances:
Jerry Watson, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On November 20, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated September 11, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the decision.

ISSUE

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

FACTUAL HISTORY

On October 29, 2003 appellant, then a retired 61-year-old sheet metal worker, filed an occupational claim alleging that in 1984 he became aware that he had a ganglion or growth on his right wrist from using a pop rivet fastener used to fasten steel and aluminum sheets. Appellant retired on March 2, 1990. Appellant's supervisor indicated that appellant first reported his condition to her on October 15, 2002. Appellant submitted medical evidence to support his claim.

By decision dated November 14, 2002, the Office denied the claim, finding that appellant's claim for an occupational disease was untimely because it was filed more than three years after appellant had knowledge that his condition was work related in 1984. The Office found that there was no evidence that his supervisor had actual knowledge of the injury within 30 days of the date of injury.

On November 21, 2002 appellant requested an oral hearing before an Office hearing representative which was held on June 23, 2003. At the hearing, appellant reiterated that he retired in 1990 and stated that his retirement was not due to his injury. Appellant described his job duties, which included manufacturing ducts and installing them. He believed that using the pop rivet gun caused his condition because it put pressure and tension on his wrist. Appellant testified that his problem began in 1984 when he felt tightness and "the rising up," perhaps referring to swelling, and that he would use a belt to make it "come back down." Appellant stated that his condition had worsened and he planned to undergo surgery to treat it. He stated that his doctor told him that he had a ganglion cyst. Appellant testified that he knew his condition was work related from 1984 to 1990 and he kept on working, and noted a court ruling in South Carolina that there was no specific time for date of injury for repetitive trauma cases and no deadline for filing a claim.

By decision dated September 11, 2003, the Office hearing representative affirmed the Office's November 14, 2002 decision.

LEGAL PRECEDENT

Under the Act,[1] as amended in 1974, a claimant has three years to file a claim for compensation.[2] In a case of occupational disease, the Board has held that 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] Even if the claim is not filed within the three-year period, it may be regarded as timely under section 8122(a)(1) if appellant's immediate supervisor had actual knowledge of his alleged employment-related injury within 30 days such that the immediate superior was put reasonably on notice of an on-the-job injury or death.[5]

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[1] 5 U.S.C. § 8122.

[2] *Duet Brinson*, 52 ECAB 168, 170 (2000); *William F. Dorson*, 47 ECAB 253, 257 (1995); *see* 20 C.F.R. § 10.101(b).

[3] *Larry E. Young*, 52 ECAB 264, 266 (2001); *Duet Brinson*, *supra* note 2 at 170.

[4] *See Larry E. Young*, *supra* note 3 at 266; *William D. Goldsberry*, 32 ECAB 536, 540 (1981).

[5] *Duet Brinson*, *supra* note 2 at 171; *Delmont L. Thompson*, 51 ECAB 155, 156 (1999).

ANALYSIS

The evidence of record establishes, from appellant's testimony and his statement in his claim, that he was aware that his wrist condition was work related in 1984. However, he continued to be exposed to the factors of employment that he alleged was aggravating his wrist until his retirement on March 2, 1990. Thus, the three-year time limit for filing his claim did not begin to run until that date. Appellant did not file his claim until October 29, 2003, more than 13 years after his date of last exposure. There is no evidence of record that his supervisor had knowledge of the actual injury within 30 days. His supervisor indicated on appellant's claim form that appellant first reported the injury to her on October 15, 2002. Although appellant contended on appeal that he had no knowledge that there was a three-year time limit for filing an occupational claim, the Board has held that ignorance of the law does not excuse filing an untimely claim.[6] Appellant's reliance on a South Carolina Supreme Court decision is not determinative as to his entitlement to benefits under the Act.[7]

CONCLUSION

The evidence of record shows that appellant's claim filed on October 29, 2003, more than 13 years after his date of last exposure, was untimely filed. There is no evidence in the record that appellant's supervisor had actual knowledge of the injury within 30 days.

[6] *Henry B. Sutherland*, 47 ECAB 712, 715 (1996); *Marcelo Crisotomo*, 42 ECAB 339, 342 (1991).

[7] *See Barbara Hughes*, 48 ECAB 398, 401 (1997); *Paul Trotman-Hall*, 45 ECAB 229, 236 (1993).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 10, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member