United States Department of Labor
Employees' Compensation Appeals Board

JOANNA L. HAILEY, Appellant	)	
and	)	**Docket No. 05-903**
	)	**Issued: October 11, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Noble, OK, Employer	)	

Appearances:
Joanna L. Hailey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 9, 2005 appellant filed a timely appeal from a November 5, 2004 merit decision of a hearing representative of the Office of Workers' Compensation Programs affirming a finding that her occupational disease claim was untimely. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant filed a timely claim for compensation under the Federal Employees' Compensation Act.

FACTUAL HISTORY

On July 29, 2003 appellant, then a 43-year-old clerk, filed an occupational disease claim alleging that on June 10, 1983 she realized that her cervical disc bulge with an annular tear was

caused or aggravated by her employment. She indicated on the claim form that she became aware of the disease on June 10, 2003. Appellant related:

> "About 10 y[ears] ago I was loaned out to work on a rural r[oute] for a few weeks. The vehicle I was driving at the time was to[o] *big* for this route. I had to do a lot of reaching and stretching from the vehicle. [M]y neck [and] shoulder started giving me problems then. I have been going to [doctors] with this problem to this day." (Emphasis in the original.)

In a statement received by the Office on August 11, 2003, appellant related that her problems began 10 years ago when, while helping out for a few weeks on another route, she had to reach and stretch to deliver the mail due to the size of her vehicle. She indicated that she began having neck and shoulder problems and received treatment for neck strain. Appellant noted that in or around 1996 she filed a claim for this injury which the Office assigned file number 16-330330 and denied due to insufficient medical evidence.

Dr. Stewart C. Smith, a Board-certified neurosurgeon and appellant's attending physician, provided a letter to the Office dated August 12, 2003 in which he related:

> "[T]he history that I received from [appellant] was that she injured her neck and left shoulder 10 years ago while carrying mail on a rural route. She told me that apparently this had to do with the fact that she was having to do a lot of bending and stretching to get to the mail boxes which were lower tha[n] the vehicle she was utilizing to carry the mail and that the repetitive work is what caused her to have significant cervical pain."

Dr. Smith diagnosed discogenic pain by magnetic resonance imaging (MRI) scan and discography.[1] He attributed her neck pain at C5-6 to her employment.

In a statement dated August 14, 2003, appellant's supervisor indicated that appellant began working for her in a limited-duty capacity in December 2002 and that she could not "deny or concur about anything that happen[ed] before [she] came to work for me."

In a statement received by the Office on August 26, 2003, appellant related:

> "I was a rural route carrier for 15 years[.] [S]everal years ago I was loaned to another office to carry a route which was in town and curb side. The truck I had was not well suited for this route. I had to do extra reaching and stretching down to reach the boxes. I worked this route for a few weeks during which time I started having neck and shoulder pain. I went to my family [doctor]. This [doctor] said I maybe strained my neck. I continued to have pain and was referred to specialists."

[1] An MRI scan of appellant's cervical spine, obtained on December 31, 2002 showed an osteophytes and disc herniaton at C5-6.

Appellant further related, "A rural carrier job consists of a lot of stretching, bending and reaching and overhead lifting. All through my career as a carrier I continued to have more pain." She indicated that she had filed a previous claim for her neck which the Office denied due to a lack of medical evidence. Appellant stated:

> "In 1998 a bone spur was found and removed from my shoulder [and] after this surgery I was [not] able to perform my job as a carrier. I am now a permanent rehab[ilitation] clerk with limited duties. I still have the same pain. I was told by the last two [doctors] the pain in my shoulder was related to the cervical problem. It just took me a long time to find out what the real problem is."

By decision dated September 12, 2003, the Office denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

On September 25, 2003 appellant requested an oral hearing on her claim. At the hearing, held on May 26, 2004 she related that, while her pain began years ago, she only recently found out that the cause of her problem was a disc displacement. Appellant realized that work aggravated her neck condition when she filed her prior claim in either 1993 or 1995. She asserted that for the past three years she performed work as a clerk and that she did not believe that her duties during this time contributed to her condition. Appellant did relate that, when working the window as a clerk, she "had to be careful with the lifting" as that could contribute to her condition." She concluded, "I feel like I hurt my neck and shoulder back when I was [a] substitute, as I put in my written agreement, you know, reaching and stretching and that [is] when I started having all the problems."

By decision dated November 5, 2004, the hearing representative affirmed the Office's September 12, 2003 decision. She noted that appellant was last exposed to the conditions to which she attributed her condition 10 years ago in 1993 and further indicated that the Office should obtain the case record from her prior claim to determine whether the current claim constituted a duplicate filing.

LEGAL PRECEDENT

Section 8122(a) of the Act[2] provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[3] 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 the employment and the compensable disability.[4] 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.[5] Even if a claim is

[2] 5 U.S.C. §§ 8101-8193.

[3] 5 U.S.C. § 8122(a).

[4] 5 U.S.C. § 8122(b).

[5] *See Linda J. Reeves*, 48 ECAB 373 (1997).

not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1), if the immediate superior had actual knowledge of her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.[6] The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[7] The Board has held that an employee need only be aware of a possible relationship between her "condition" and her employment to commence the running of the applicable statute of limitations.[8] When an employee becomes aware or reasonably should have been aware that she has a condition which has been adversely affected by factors of her federal employment, such awareness is competent to start the limitation period even though she does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.[9]

In cases of occupational disease, 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 her condition and her employment. Where the employee continues in such employment after she reasonably should have been aware that she has a condition which has been adversely affected by factors of her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.[10]

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[11] It has the obligation to see that justice is done.[12]

ANALYSIS

When appellant filed her claim for compensation on July 29, 2003 she indicated that on June 10, 1983 she first realized that her claimed condition was caused or aggravated by her federal employment. She related that her problems began 10 years prior when she worked for a few weeks as a substitute on a rural route with a large vehicle such that she had to reach and stretch frequently when delivering mail. Appellant described the job duties of a rural carrier and noted that she continued to experience pain throughout her career as a rural carrier. In occupational disease claims, 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 her condition and her employment. Where the employee continues in such employment after she

[6] 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

[7] *Willis E. Bailey*, 49 ECAB 509 (1998).

[8] *Edward C. Horner*, 43 ECAB 834, 840 (1992).

[9] *Larry E. Young*, *supra* note 6.

[10] *Alicia Kelly*, 53 ECAB 244 (2001).

[11] *See Allen C. Hundley*, 53 ECAB 551 (2002).

[12] *Lourdes Davila*, 45 ECAB 139 (1993).

reasonably should have been aware that he or she has a condition which has been adversely affected by factors of her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.[13]

Appellant attributed her condition to her work as a rural carrier. She further indicated that she became aware of the relationship between her employment and her cervical and shoulder conditions in either 1993 or 1995. Appellant thus had three years from the date she was last exposed to work conditions as a rural carrier to file her claim. The record, however, is not clear regarding when she stopped work as a rural carrier. Appellant noted at the hearing that she switched from working as a rural carrier to working as a clerk around three years prior. The only evidence from the employing establishment regarding her employment duties indicated that she began working in a limited-duty capacity in December 2002. If this is the date that appellant ceased working as a rural letter carrier, her claim would be timely.

Proceedings under the Act are not adversarial in nature and, while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[14] The Office has an obligation to see that justice is done.[15] In this case, it is not clear from the record when appellant was last worked as a rural letter carrier and thus it is unclear the date that she was last exposed to those factors alleged to have caused her condition. As the issue is whether her claim was timely filed, the question of when she was last exposed to the conditions to which she attributed her cervical and shoulder conditions must be fully resolved. The Board, therefore, will remand the case for further development of the factual evidence on this issue. Following this and such further necessary development, the Office shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[13] *Alicia Kelly*, *supra* note 10.

[14] *See Allen C. Hundley*, *supra* note 11.

[15] *Lourdes Davila*, *supra* note 12.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 5, 2004 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 11, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board