

employment, he stated, “When I was assigned to civil engineer squadron I was performing a job at the base cemetery with a military member. I was accidentally drenched with nonpotable water which also [was ingested] due to a 120-pound pressure coming out of a 16[-]inch water main.” Regarding the reason for delaying the filing of his claim, he noted, “Parasite was not detected for a couple of months and my supervisor, Bill Feduska, said at the time that there was no claim of parasite in nonpotable water. Per medical examination months later, parasites were detected due to blood tests.” The record reveals that Mr. Feduska was appellant’s immediate supervisor from 1996 until the time he transferred to another work unit effective August 30, 1998.¹

By decision dated April 21, 2004, the Office denied appellant’s claim on the grounds that it was barred by the applicable time limitation provisions of the Act.

Appellant submitted records including the findings of September 30, 1997 Campylobacter-like Organism (CLO) testing which showed that he tested positive for the bacteria Helicobacter Pylori. In a report dated January 17, 1997, Lieutenant Colonel Stephen Murray, a medical officer for the employing establishment, indicated that appellant presented to the clinic “for swallowing nonpotable water” and indicated that “this had happened before.” Mr. Murray stated that appellant expressed concerns about losing weight for two months.² Appellant submitted other reports, mostly dated in 1998, which indicated that he had various gastrointestinal problems, including a peptic ulcer.

Appellant requested a hearing before an Office hearing representative which was held on November 17, 2004. He testified that he ingested nonpotable water on several occasions until he was transferred to another work unit effective August 30, 1998. Appellant claimed that he told Mr. Feduska about his positive CLO test in September 1996, but that he advised him that he could not file a claim for an “internal” condition and that his claim would be included under a hearing loss claim he filed in 1996. He stated that he sought medical attention on January 17, 1997 and realized that his condition might be due to his ingestion of nonpotable water at work.

In a statement dated December 9, 2004, Mr. Feduska denied that he was informed of the claimed injury while he served as appellant’s supervisor. He indicated that he did not tell appellant that he could not file a claim for such a condition or that his claim would be included under a hearing loss claim he filed in 1996.

By decision dated and finalized November 21, 2005, the Office hearing representative affirmed the Office’s April 21, 2004 decision.³

¹ Appellant’s new supervisor, Jaime Bouchard, indicated that he was not aware of appellant’s claimed condition until April 12, 2004.

² An attending physician’s report dated September 30, 1996 indicated that appellant was suffering from a bleeding ulcer.

³ The Office reissued a decision which he initially issued on February 10, 2005 in order to help preserve appellant’s appeal right after a Board-directed reconstruction of the record.

LEGAL PRECEDENT

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.”⁴ 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 his employment and the compensable disability.⁵ 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.⁶

An employee’s claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days⁷ or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119.⁸ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁹

ANALYSIS

Appellant claimed that he sustained a parasite which affected his gastrointestinal system, when he ingested nonpotable water on several occasions prior to August 30, 1998. He filed a claim for this alleged condition on April 19, 2004 and the Office denied his claim as untimely filed.

Appellant indicated on his April 19, 2004 claim form that he first became aware of his injury on September 30, 1996 and first realized that it was related to his employment on January 17, 1997. He noted on the form that he realized the relationship of his claimed condition to ingesting nonpotable water at work after he tested positive for a parasite in September 1997, but that Mr. Feduska told him that he could not file a claim. The record contains the findings of September 30, 1997 CLO testing which showed that appellant tested positive for the bacteria *Helicobacter Pylori* and, a report dated January 17, 1997, in which Mr. Murray, a medical officer for the employing establishment, indicated that appellant presented to the clinic “for swallowing nonpotable water” and complained of losing weight. At a November 17, 2004 oral hearing, appellant repeated his assertion that he told Mr. Feduska about his positive CLO test in September 1996, but indicated that he was advised that he could not file a claim for an “internal” condition and that his claim would be included under a hearing loss claim he filed in 1996.

⁴ 5 U.S.C. § 8122(a).

⁵ 5 U.S.C. § 8122(b).

⁶ *Charlene B. Fenton*, 36 ECAB 151, 157 (1984); *Gladys E. Olney*, 32 ECAB 1643, 1645 (1982).

⁷ 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990).

⁸ 5 U.S.C. §§ 8119, 8122(a)(2).

⁹ 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, *supra* note 7 at 746.

Appellant also stated that he sought medical attention on January 17, 1997 because he realized his condition might be due to his ingestion of nonpotable water at work.¹⁰

For these reasons, the evidence establishes that appellant was aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship between his employment and the compensable disability no later than January 17, 1997. The totality of the factual circumstances of record, including the medical reports of record and appellant's statements regarding his awareness of his claimed condition, establish that appellant was aware, or by the exercise of reasonable diligence should have been aware, no later than January 17, 1997, that his claimed injury was due to employment factors.

Appellant's last possible exposure to the implicated employment factors, *i.e.*, nonpotable water, occurred no later than August 30, 1998. As noted above, 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. Therefore, the time limitation in appellant's case began to run no later than August 30, 1998. Since appellant did not file a claim until April 19, 2004, his claim was not filed within the three-year period of limitation.¹¹

CONCLUSION

The Board finds that the Office properly determined that appellant's claim for compensation is barred by the applicable time limitation provisions of the Act.

¹⁰ The Board notes that appellant's claims regarding the instructions of Mr. Feduska would not justify the late filing of his claim. Mr. Feduska has denied that he told appellant that he could not file a claim for his claimed condition or that his claim would be included under a hearing loss claim he filed in 1996.

¹¹ As noted above, an employee's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119. Appellant has not shown that he has satisfied either of these provisions. Mr. Feduska, his immediate supervisor during the time of the alleged injury, explicitly denied that he was informed of the claimed injury while he served as appellant's supervisor.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 21, 2005 decision is affirmed.

Issued: May 8, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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