United States Department of Labor
Employees' Compensation Appeals Board

B.M., Appellant	)	
and	)	**Docket No. 10-618**
	)	**Issued: December 10, 2010**
U.S. POSTAL SERVICE, POST OFFICE, Norfolk, VA, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 4, 2010 appellant filed a timely appeal from a July 20, 2009 merit decision of the Office that denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office properly denied appellant's occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

FACTUAL HISTORY

On April 22, 2009 appellant, then 56-year-old retired letter carrier, filed an occupational disease claim alleging that his low back condition and sciatic nerve damage were due to his employment duties as a letter carrier. He indicated that he was first aware of his condition on February 18, 2002. The employing establishment indicated that appellant first reported his condition to a supervisor on April 21, 2009. Appellant resigned from the employing establishment on April 10, 2009.

In a separate statement, appellant stated that he worked at the employing establishment as a letter carrier since 2000 with the previous eight years spent working as a regular carrier in which he walked four to six hours daily. He further described his duties and stated that, in February 2002, he was medically recommended to be excused from work and limit his activities for weeks at a time. Appellant stated that, over the course of seven years, he had to use many hours of sick leave. He advised his lumbar x-ray films from February 2002 showed degenerative disc disease at L4-5 and degenerative changes at L3-5 vertebrae and his March 2002 magnetic resonance imaging (MRI) scan noted degenerative changes at L3-5. Appellant stated that the delay in filing his claim was due to the fact that his back condition worsened and he decided continuing his employment with the employing establishment would only worsen his condition.

In a May 7, 2007 letter, the Office requested additional factual and medical information from appellant. Appellant submitted a July 8, 2009 statement along with a July 6, 2009 medical report from Dr. Charlene Darrow, a Board-certified family practitioner, who indicated that she had been his primary care manager since July 2002. Dr. Darrow stated that appellant first presented to the clinic on February 18, 2002 complaining of low back pain for two weeks after heavy lifting. She reported on his findings as well as the objective evidence obtained in February and March 2002. Dr. Darrow stated that appellant had performed manual-type labor for most of his adult life and advised that the degenerative disc and spine changes noted on x-rays in February 2002 developed over many years. She indicated that appellant's work as a mail carrier from 2000 until recently had subjected him to heavy lifting, bending and carrying a 35-pound mailbag asymmetrically on one shoulder while negotiating sometimes uneven terrain and physical obstacles. Dr. Darrow noted that his most recent pain flare was aggravated when he was knocked down by an aggressive dog. She opined that, while appellant's spine condition developed years ago, the rigors of his work as a mail handler/carrier contributed to the sciatic radicular symptoms, ongoing pain and limitations in activities and adversely affected his quality of life.

By decision dated July 20, 2009, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that it was timely filed in accordance with 5 U.S.C. § 8122. It found that he first became aware of his condition on February 18, 2002 and that he had filed his claim for compensation on April 22, 2009. The Office found appellant should have become aware of a relationship between his employment and the claimed condition by April 10, 2009. It further noted that there was no evidence that appellant's supervisor had knowledge of an employment-related injury within 30 days.

LEGAL PRECEDENT

Section 8122(a) of the Federal Employees' Compensation Act[1] states that an original claim for compensation for disability or death must be filed within three years after the injury or death.[2] 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

[1] 5 U.S.C. § 8122(a).

[2] *Id.*

aware, of the causal relationship between the employment and the compensable disability.[3] 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.[4]

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate supervisor reasonably on notice of appellant's injury.[5] An employee must show not only that his immediate supervisor knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[6]

ANALYSIS

In its July 20, 2009 decision, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that his claim was timely filed in accordance with 5 U.S.C. § 8122.

Appellant indicated on the CA-2 form, notice of occupational disease claim, submitted on April 22, 2009, that he first became aware of a connection between his claimed back condition and his employment on February 18, 2002. Thus, he had actual awareness of the claimed relationship no later than February 18, 2002. The record reveals, however, that appellant remained exposed to the work factors alleged to have caused his condition until he resigned, April 10, 2009. As noted, if an employee continues to be exposed to injurious working conditions after becoming aware of a relationship between his employment and his claimed condition, the time limitation begins to run on the last date of this exposure. Therefore, the time limitations began to run on April 10, 2009, the date on which he was last exposed to conditions of his employment alleged to have caused his claimed condition. As appellant filed his claim on April 22, 2009, his claim was timely filed within the three-year time limitation period under section 8122. Therefore, the Board will remand the case to the Office to address the merits of the claim.

On appeal, appellant asserts that the Office should have accepted his claim as his condition developed and worsened over a period of time. As the case must be remanded for additional consideration, it is premature for the Board to address appellant's argument.

CONCLUSION

As appellant timely filed a claim in accordance with 5 U.S.C. § 8122, the case is remanded to the Office for further development of the merits of the claim.

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[3] *Id.* at § 8122(b).

[4] *See Mitchell Murray*, 53 ECAB 601 (2002); *Alicia Kelly*, 53 ECAB 244 (2001); *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

[5] 5 U.S.C. § 8122(a)(1); *see also Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(a)(3) (March 1993).

[6] *Charlene B. Fenton*, 36 ECAB 151 (1984).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 20, 2009 is reversed. The case is remanded for further action consistent with this decision of the Board.

Issued: December 10, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board