

U. S. DEPARTMENT OF LABOR
Employees' Compensation Appeals Board

In the Matter of KENNETH R. FORD and DEPARTMENT OF THE ARMY,
Fort McCoy, Wis.

*Docket No. 97-54; Submitted on the Record;
Issued October 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On April 24, 1995 appellant, then a 47-year-old unit technician, filed a claim alleging that he sustained chronic ulceration of the left foot due to factors of his federal employment. Appellant indicated that he first became aware of his condition on November 21, 1988 and related it to factors of his federal employment on March 9, 1989. On the reverse of the form, the employing establishment indicated that appellant first reported his condition to his supervisor on April 19, 1995 and resigned from federal service in 1991.

Appellant submitted numerous medical reports from 1990 through 1995. These reports noted that appellant's conditions of callus formation, plantar warts, jungle rot and tinea pedis had existed since 1967 when appellant was on active duty in the armed forces.

By decision dated July 10, 1995, the Office of Workers' Compensation Programs found that appellant was aware of his condition on November 21, 1988 and aware of the alleged relationship with his federal employment on March 9, 1989. The Office found that written notice was received on April 24, 1995 and that this was not within 3 years of the last exposure in 1991 and that the record did not support a finding that appellant's immediate supervisor had actual knowledge of the injury within 30 days.

Appellant requested a review of the written record on July 16, 1995. By decision dated October 27, 1995, the hearing representative affirmed the Office's July 10, 1995 decision.

The Board has duly reviewed the case on appeal and finds that appellant's claim is barred by the applicable time limitation provisions of the Act.

Section 8122(a) of the Act¹ states that “[a]n original claim for compensation for disability or death must be filed within three years after the injury or death.” 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.² 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.³

In the present case, the time limitation for filing a claim began to run in 1991, the date that appellant was last exposed to the employment conditions, which he alleged aggravated his foot condition. Since appellant did not file a claim until April 24, 1995, it was not timely filed within the three-year period of limitation. Appellant’s claim, however, 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. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁴ In the present case, appellant has submitted no evidence that his supervisor had actual knowledge of his work-related injury.

Appellant alleged that he was unaware of the applicable provisions of the Act. The Board has held, however, that neither the failure of the employing establishment to assist in filing for compensation nor ignorance that a disability is compensable is sufficient cause for waiving the time limitation.⁵

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

³ *Linda J. Reeves*, 48 ECAB ____ (Docket No. 96-949, issued February 27, 1997).

⁴ *Id.*

⁵ *Cecile Cormier*, 48 ECAB ____ (Docket No. 95-536, issued April 11, 1997).

The decisions of the Office of Workers' Compensation Programs dated October 27 and July 10, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 1, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member