

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**RONALD MARTINEZ, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAVAL  
SHIPYARD, Pearl Harbor, HI, Employer**

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**Docket No. 05-297  
Issued: April 15, 2005**

*Appearances:*  
*Ronald Martinez, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chairman  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On November 15, 2004 appellant filed a timely appeal of the March 24 and August 19, 2004 merit decisions of the Office of Workers' Compensation Programs that found his claim for carpal tunnel syndrome was not timely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this time limitation case.

**ISSUE**

The issue is whether appellant's claim for carpal tunnel syndrome was timely filed.

**FACTUAL HISTORY**

On February 6, 2004 appellant filed a claim for compensation for an occupational disease of carpal tunnel syndrome which he attributed to his duties as a crane operator. Appellant became aware of his disease on April 20, 1990 and first realized it was caused or aggravated by his employment on October 14, 1992. The employing establishment reported that appellant retired on May 1, 1996.

By letter dated February 20, 2004, the Office advised appellant that claims must be filed within three years after the occurrence of the injury, that his claim could still be allowed if it was not filed within three years if his immediate supervisor had actual knowledge of the injury within 30 days of its occurrence, and that actual knowledge could be shown by an employing establishment testing program in connection with a recognized environmental hazard. In a March 10, 2004 letter, appellant described his employment duties to which he attributed his condition, and stated that he first noticed pain in his hand in April 1990, which he thought would go away but never did.

By decision dated March 24, 2004, the Office found that appellant's claim was not timely filed within three years of the date of his last occupational exposure to the claimed employment factors, which was the date he retired, May 1, 1996. The Office further found that the evidence did not support a finding that his immediate supervisor had actual knowledge of injury within 30 days of his retirement.

Appellant requested a review of the written record, and submitted an April 18, 2004 letter from his former supervisor describing his duties, and stating, "Certain individuals have experienced wear and tear to muscle/tendons or experienced carpal tunnel syndromes and have surgery done to correct this problem and who were also under my cognizance and work center at [the employing establishment] by professional medical personnel. [Appellant] could have the same symptoms and should be tested and evaluated by a professional medical doctor to see if the same problem exists and if it could be work related."

By decision dated August 19, 2004, an Office hearing representative found that appellant's claim was not timely filed.

### **LEGAL PRECEDENT**

Section 8122(a) of the Federal Employees' Compensation Act states, "An 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 his employment and the compensable disability.<sup>1</sup> 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.<sup>2</sup> 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 his alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury. An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8122.

<sup>2</sup> *Willis E. Bailey*, 49 ECAB 511 (1998).

<sup>3</sup> *Charlene B. Fenton*, 36 EAB 1511 (1984).

**ANALYSIS**

Appellant stated on his claim form that he was aware of his condition of carpal tunnel syndrome on April 20, 1990 and aware that it was caused or aggravated by his employment on October 14, 1992. As appellant continued to work and be exposed to potentially injurious employment factors until his retirement on May 1, 1996, the time for filing a claim began to run on May 1, 1996. Appellant's claim filed on February 6, 2004 was not filed within the three-year time limitation of the Act. Therefore, his claim is untimely.

There is no evidence that his supervisor was aware of appellant's injury within 30 days of May 1, 1996, the last day he was exposed to potentially injurious employment factors. The supervisor's April 18, 2004 letter does not indicate any awareness of appellant's condition of carpal tunnel syndrome or of its relationship to appellant's employment within 30 days of appellant's retirement. For this reason, the Board will affirm the Office's determination that appellant did it timely file his claim for compensation.

**CONCLUSION**

The Board finds that appellant's claim for carpal tunnel syndrome was not timely filed.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 19 and March 24, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 15, 2005  
Washington, DC

Alec J. Koromilas  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member