

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

E.G., Appellant)

and)

DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
Vancouver, WA, Employer)

Docket No. 07-1974
Issued: December 27, 2007

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 17, 2007 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' hearing representative dated May 29, 2007. Under 20 C.F.R. §§ 501(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly denied appellant's compensation claim on the grounds that his claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

FACTUAL HISTORY

Appellant, a retired 70-year-old maintenance mechanic supervisor, filed a claim for benefits on January 22, 2006, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. Appellant retired on August 11, 1997. He stated that he first

became aware that he had sustained a hearing loss causally related to his employment on June 1, 1997.

By letter dated March 21, 2006, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. The Office stated that appellant had 30 days to submit the requested information.

Appellant submitted a statement, received by the Office on April 28, 2006, in which he indicated that he had been exposed to loud noise while working for the employing establishment from 1975 to 1997. He advised that he first became aware that he had a work-related hearing loss and ringing in his ears in 1997. Appellant alleged that he complained to his supervisor about his hearing loss and ringing in the ears, but was told that there was no cure.

By decision dated June 11, 2006, the Office denied appellant's claim, finding that he failed to file a timely claim under section 8122.

On July 25, 2006 appellant requested an oral hearing, which was held on March 13, 2007. He reiterated at the hearing that he informed his supervisor that he experienced periodic ringing in his ears, but that his supervisor, Hal Wright, told him there was no cure or treatment for tinnitus. Appellant asserted that Mr. Wright became aware of his symptoms in 1996. He indicated that he attempted to get a written statement from Mr. Wright confirming that he complained of hearing loss in 1996; however, he was unable to obtain one. Appellant reiterated that he retired from the employing establishment in August 1997.

Appellant submitted a March 2, 2007 audiogram which indicated that he sustained a mild, moderate bilateral hearing loss in the higher frequencies.¹

By decision dated May 29, 2007, an Office hearing representative affirmed the June 11, 2006 Office decision.

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."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 aware, of the causal relationship between her employment and the compensable disability.³ The statute provides an exception, which states that a claim may be regarded timely if an immediate superior had actual knowledge

¹ This audiogram was not certified by a physician as accurate. The Board notes that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122(b).

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

ANALYSIS

In the instant case, appellant stated that he first became aware that he had sustained a hearing loss causally related to his employment in June 1997. Appellant did not file a claim until January 2006, by which time he had admittedly become aware that he had sustained some hearing loss. This is beyond the three-year time limitation set forth in the statute. In a case of latent disability, the time limitation does not run from the date of injury, but rather from the date that the claimant is aware, of the causal relationship between his employment and the compensable condition/disability. In his April 28, 2006 statement, appellant acknowledges that he became aware of a hearing loss prior to his retirement in August 1997. He acknowledged at the hearing that his hearing loss was related to his employment at the same time as he was aware of his hearing loss. The claim therefore should have been filed within three years of his August 1997 retirement.

Appellant alleged that he informed his supervisor regarding his hearing loss in 1996; however, he has not submitted any evidence to substantiate his allegation. The evidence of record does not indicate that appellant provided any notice of injury to his supervisor prior to this time, or that anything occurred to make his supervisor reasonably aware that he sustained an occupational disease or condition relating to his employment. The Board therefore finds that appellant failed to file his claim for hearing loss within the applicable time limitation provisions. The Office properly found in its June 11, 2006 decision that appellant failed to file a timely claim. Following the June 11, 2006 decision, appellant requested an oral hearing, but did not submit any additional evidence indicating that he filed a timely claim. The Board therefore affirms the May 29, 2007 decision of the Office hearing representative affirming the June 11, 2006 Office decision denying appellant's claim for a schedule award based on hearing loss.⁵

CONCLUSION

The Board finds that the Office properly denied appellant's compensation claim on the grounds that his claim was not filed within the applicable time limitation provisions of the Act.

⁴ 5 U.S.C. § 8122(a)(1); see *Eddie L. Morgan*, 45 ECAB 600 (1994); *Jose Sales*, 41 ECAB 743 (1990).

⁵ The Board notes that appellant submitted additional evidence to the record following the May 29, 2007 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: December 27, 2007
Washington, DC

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

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

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