

On June 6, 2006 appellant, then a 77-year-old former naval engineer and machinist, filed an occupational disease claim alleging that on August 16, 2001 he first realized that he had asbestosis and that this condition was caused or aggravated by factors of his federal employment.

Accompanying appellant's claim was an October 23, 2003 report from Dr. Frank Ganzhorn, Board-certified in internal medicine, regarding appellant's September 20, 2003 visit. Dr. Ganzhorn diagnosed asbestosis based on a chest computerized tomography (CT) scan done on August 16, 2001 as reviewed by Dr. William Meseroll, Board-certified in diagnostic radiology. In a statement accompanying his claim, appellant also listed his employment history and alleged asbestosis exposure. In a July 17, 2006 letter, the employing establishment notified the Office that appellant had left the shipyard in 1984 and retired from federal service in December of that year. The shipyard closed in 1996.

In an August 25, 2006 letter, the Office requested additional information from appellant, specifically asking why he did not seek treatment until September 20, 2003 if he had been aware of asbestosis exposure on August 16, 2001. No response was received. The Office received copies of appellant's employment records.

In a November 15, 2006 decision, the Office denied appellant's claim on the grounds that the claim was untimely.

LEGAL PRECEDENT

The basic time limit for filing is in section 8122(a) of the Federal Employees' Compensation Act¹ which provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.² However, section 8122(b) modifies the basic rule in latent disability cases where 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 a causal relationship between the employment and the compensable disability.³ The Board has ruled that an employee need only be aware of a possible relationship between his "condition" and his employment to commence the running of the applicable statute of limitations.⁴ If an employee continues to be exposed to injurious working conditions after he or she becomes aware of causal relationships, the three-year time limit begins to run on the last date of the exposure.⁵ A claim filed after the three-year limit may still be regarded as timely under section 8122(a)(1) if the employee's immediate superior had actual knowledge of his alleged employment-related injury within 30 days of its occurrence. Appropriate written notice provided within 30 days of an event, pursuant to section 8119,⁶ may also affect the three-year rule. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁷

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122(a).

³ 5 U.S.C. § 8122(b).

⁴ *Edward C. Horner*, 43 ECAB 834, 840 (1992).

⁵ *See Linda J. Reeves*, 48 ECAB 373 (1997).

⁶ 5 U.S.C. § 8122(a)(1), (2); *see also Larry E. Young*, 52 ECAB 264 (2001).

⁷ *Willis E. Bailey*, 49 ECAB 509 (1998).

ANALYSIS

When appellant filed his claim for compensation on June 6, 2006, he indicated that he first learned of his asbestosis condition and that it was caused or aggravated by his federal employment on August 16, 2001. This date is supported by the fact that August 16, 2001 is also the date of the CT scan Dr. Ganzhorn cited in his October 23, 2003 report. The CT scan report is not included in the record but was incorporated and relied upon by Dr. Ganzhorn during his 2003 evaluation.

Because this is a latent disability case, the three-year time limitation began to run on August 16, 2001. Appellant had until August 16, 2004 to file his claim and because he did not file his claim on or before that date it is untimely.

Other provisions in the statute do not affect this outcome. Appellant had no continuing exposure to asbestos after his 1984 retirement from federal service. No evidence exists in the record to establish either actual knowledge by an immediate superior or appropriate, written notice to the employing establishment. Appellant had to file his claim on or before August 16, 2004 and failed to do so.

CONCLUSION

The Board finds that appellant did not file a timely claim for compensation under the Act.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs on November 15, 2006 is affirmed.

Issued: May 17, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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