SECTION 30

Section 30(a)-(d), (f)

Section 30 requires that employer file a report of injury, and it provides that the statute of limitations of Section 13 is tolled where employer fails to do so.

Section 30(a), as amended in 1984, provides that within 10 days of the date of any injury which causes the loss of one or more shifts of work, or death, or within 10 days from the date an employer has knowledge of a disease or infection in respect of such injury, the employer must submit a report of injury to the Secretary. A copy of this report must also be sent to the deputy commissioner/district director in the compensation district in which the injury occurred. Notwithstanding these requirements for lost-time injuries, each employer must keep a record of each and every injury regardless of whether the injury results in the loss of one or more shifts of work. *See* 20 C.F.R. §702.201. Prior to the 1984 Amendments, this provision did not specify that it applies only to any injury "which causes the loss of one or more shifts of work."

Section 30(a) further specifies the contents of the report, including information regarding the identity of the employer and claimant, the cause and nature of the injury or death, the time and place of the injury or death and any other information the Secretary may require. *See* 20 C.F.R. §702.202.

Section 30(b) provides that additional reports regarding the injury and condition of the employee must be filed as required by the Secretary. Section 30(c) states that any report provided under subsections (a) or (b) shall not be evidence of any fact stated therein in any proceedings regarding such injury or death. Section 30(d) provides that timely mailing of reports to the appropriate officials will satisfy subsections (a) and (b).

Section 30(f) provides that where an employer or carrier has been given notice, or the employer, his agent or carrier has knowledge of an employee's injury or death and "fails, neglects or refuses to file" the report required by Section 30(a), the Section 13(a) time period does not begin to run against the claim until the report is filed. *See* 20 C.F.R. §702.205.

Section 30(f) should be read in conjunction with the language in Section 12(a) regarding notice and in Section 12(d)(l), providing for excuse of untimely notice where employer has knowledge of the injury or death. As under Section 12(d)(1), employer must have knowledge not only of the fact of claimant's injury but also that it is work-related. *See Sheek v. Gen. Dynamics Corp.*, 18 BRBS 1 (1985), *modified on recon.*, 18 BRBS 151 (1986); 33 U.S.C. §912(a), (d)(l).

In *Director, OWCP v. Nat'l Van Lines Inc.*, 613 F.2d 972, 11 BRBS 298 (D.C. Cir. 1979), *aff'g in pert. part sub nom. Riley v. Eureka Van & Storage Co.*, 1 BRBS 449 (1975), *cert. denied*, 448 U.S. 907 (1980), the court rejected employer's argument that its accident report to the Virginia Industrial Commission fulfilled the requirements of Section 30. The court held that employer clearly failed to file the required report with the Secretary and deputy commissioner. Thus, under the plain language of Section 30, the Section 13 time period was tolled.

Moreover, belief that state law rather than federal law applies to the injury does not excuse the failure to file a Section 30(a) report. *Castro v. McLean Indus.*, 12 BRBS 911 (1980). In *Cooper v. John T. Clark & Sons of Maryland, Inc.*, 11 BRBS 453 (1979), *aff'd*, 687 F.2d 39, 15 BRBS 5(CRT) (4th Cir. 1982), the Board concluded that an employer need not have definite knowledge that an injury was within the jurisdiction of the Act for Section 30(f) to apply. Therefore, where the employer knew of claimant's injury and its job relatedness, the employer's knowledge was sufficient to require it to file a report. *Accord Spear v. Gen. Dynamics Corp.*, 25 BRBS 132 (1991); *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990).

In order to rebut the Section 20(b) presumption that a claim was timely filed, employer must establish compliance with Section 30 before it can prevail under Section 13(a). *See Peterson v. Washington Metro. Area Transit Auth.*, 13 BRBS 891 (1981); *Fortier v. Gen. Dynamics Corp.*, 15 BRBS 4 (1982) (Kalaris, dissenting in part), *aff'd mem.*, 729 F.2d 1441 (2d Cir. 1983); *McQuillen v. Horne Bros., Inc.*, 16 BRES 10 (1983). *See* Section 20(b) of the desk book.

In *Fortier*, 15 BRBS 4, the Board affirmed the administrative law judge's finding that a claim was not time-barred where the record was void of evidence indicating when the claim was filed and employer had failed to file a Section 30(a) report, thereby resulting in Section 30(f) tolling the Section 13 statutory time period.

In *Patterson v. Savannah Mach. & Shipyard*, 15 BRBS 38 (1982), *aff'd sub nom. Argonaut Ins. Co. v. Patterson*, 846 F.2d 715, 21 BRBS 51(CRT) (11th Cir. 1988), the Board held that employer's failure to file a Section 30(a) report of injury until two years after claimant had informed his foreman that he had silicosis was sufficient to toll the Section 13 time limitation pursuant to Section 30(f). In affirming the Board, the Eleventh Circuit relied on the expanded time period for occupational diseases and found the claim timely filed.

In *Williams v. Washington Post Co.*, 13 BRBS 366 (1981), the Board upheld the administrative law judge's finding that the claim was not barred by Section 13 where claimant filed his claim six years after learning that his skin condition was work-related. Claimant had informed employer of the condition at the time that he learned that it was work-related but employer did not file a Section 30(a) report until after the claim was filed. The Board rejected employer's argument that Section 30 did not apply to occupational

disease cases and held that, on these facts, the Section 13 time limitation was tolled pursuant to Section 30(f).

However, where the time for filing a timely claim has already run when employer gains knowledge of the injury, Section 30 cannot toll the claim. In *Keatts v. Horne Bros., Inc.*, 14 BRBS 605 (1982), where claimant was "aware" for two years before he filed his claim and employer gained knowledge of the injury, the Board held that Section 30(f) did not apply to toll the statute. The Board stated that the fact that employer did not file its report until six weeks after knowledge rather than 10 days is not relevant where the Section 13 time period had expired prior to employer's knowledge of the injury.

Digests

The Board held that the administrative law judge erred in imputing knowledge of a work-related injury to employer for purposes of Section 30(f) based on claimant's application for non-occupational health and disability insurance benefits where the record did not indicate that employer knew or should have known the injury occurred in its parking lot. The case was remanded for reconsideration of whether the claim was timely filed within one year of the date of awareness of the relationship between the injury and employment. *Alston v. Safeway Stores, Inc.*, 19 BRBS 86 (1986).

The D.C. Circuit held that where employer knew of claimant's respiratory ailment but had not been put on notice that it could be work-related, its failure to file a Section 30(a) report of injury did not toll the Section 13(a) limitations period pursuant to Section 30(f). Claimant admitted he did not tell employer of his belief he had a work-related condition, his long history of respiratory complaints prior to his employment would suggest non-work causes, and his doctor's letters did not mention a work connection. The court also found that although employer began to require that employees wear breathing masks, this requirement alone was insufficient to put employer on notice of a work-related condition. Employer's failure to file a Section 30(a) report of injury therefore did not toll the Section 13(a) limitations period. *Stark v. Washington Star Co.*, 833 F.2d 1025, 20 BRBS 40(CRT) (D.C. Cir. 1987).

The Board held that once employer filed an initial Section 30(a) report of an accidental knee injury in 1975, employer did not need to file additional reports for purposes of Section 30(f) when it was informed of possible sequelae of the work injury. Thus, employer's failure to file a report of injury based on claimant's allegations of chronic synovitis in 1978 until 1982 did not serve to toll the Section 13 limitations period pursuant to Section 30(f). *Gencarelle v. Gen. Dynamics Corp.*, 22 BRBS 170 (1989), *aff'd*, 892 F.2d 173, 23 BRBS 13(CRT) (2d Cir. 1989).

The Second Circuit affirmed the Board's decision that, for purposes of tolling the Section 13 statute of limitations, employer need not file a separate Section 30(a) report at every

stage of a developing injury and that the initial report of injury sufficed to prevent the tolling of the statute of limitations as to the sequelae of the initial injury. *Gencarelle v. Gen. Dynamics Corp.*, 892 F.2d 173, 23 BRBS 13(CRT) (2d Cir. 1989), *aff'g* 22 BRBS 170 (1989).

As the right to disability benefits survives the employee's death, the Board rejected employer's argument that claimant lacked standing to file a claim. As the administrative law judge erred in relying on the doctrine of laches and properly found that Section 13 could not bar the claim as employer never filed a Section 30(a) report for the employee's injury, the Board vacated the finding that the disability claim was barred and remanded for consideration of the merits. *Maddon v. W. Asbestos Co.*, 23 BRBS 55 (1989).

The Board held that the administrative law judge rationally concluded that employer complied with the requirements of Section 30(a) where employer claimed to have sent an injury report to the deputy commissioner at the same time that it sent a copy of the report to its carrier, the record contained a photocopy of the copy sent to the carrier with a timely date stamped with the carrier's stamp, and there was testimony that the report sent to the deputy commissioner could have been destroyed. Therefore, the Board affirmed the finding that the Section 13(a) limitations period was not tolled under Section 30(f). *Aurelio v. Louisiana Stevedores, Inc.*, 22 BRBS 418 (1989), *aff'd mem.*, No. 90-4135 (5th Cir. Mar. 5, 1991).

The Board remanded the case for the administrative law judge to determine if employer complied with the requirements of Section 30(a) by filing a Form LS-202bT, a "no time lost log," rather than a Form LS-202 for a time lost injury, where claimant alleged that his back injury was much more serious than a "no time lost injury" and ultimately required surgery. *Hartman v. Avondale Shipyard, Inc.*, 23 BRBS 201, *vacated on other grounds on recon.*, 24 BRBS 63 (1990).

The Board restated its holding in *Keatts*, 14 BRBS 605, that Section 30(f) cannot be used to save a claim where claimant had knowledge of the work-relatedness of his injury, but employer did not receive notice or otherwise obtain knowledge before the end of the relevant filing period. Since claimant was "aware" for over two years before employer had notice, Section 30(f) does not toll the statute of limitations. *Wendler v. Am. Red Cross*, 23 BRBS 408 (1990) (McGranery, J., dissenting).

Where claimant entered into a settlement with employer in which employer agreed to pay claimant $54,420 in exchange for a release of liability for a work injury and later filed a claim for benefits under the Act, the Section 13(a) statute of limitations was tolled pursuant to Section 30(f) because employer failed to file a timely First Report of Injury. Application of Section 30(f) does not require that employer have definite knowledge that the injury comes within the jurisdiction of the Act and the fact that the case may arise under a statute other than the Act (in this case the Jones Act) does not excuse employer's failure to file the

Section 30(a) report. *Ryan v. Alaska Constructors, Inc.*, 24 BRBS 65 (1990).

Application of Section 30(f) does not require that employer have definite knowledge that the injury comes within the jurisdiction of the Act, and the fact that the case may arise under a statute other than the Act (in this case the state act) does not excuse employer's failure to file a Section 30(a) report. As employer had knowledge of the injury and did not file a Section 30(a) report until after claimant filed a claim under the Act, the Board affirmed the administrative law judge's finding that the statute of limitations was tolled and that the claim was timely filed. *Spear v. Gen. Dynamics Corp.*, 25 BRBS 132 (1991).

The Board stated that in order to overcome the Section 20(b) presumption, employer must establish that it complied with Section 30(a). In this case, no Section 30(a) report was in the record. Moreover, employer did not dispute that PMA was its agent, *see Derocher v. Crescent Wharf & Warehouse*, 17 BRBS 249 (1985). The Board affirmed the administrative law judge's finding that claimant's contacts with PMA were sufficient to apprise PMA of a work injury for which compensation liability was possible and the PMA's knowledge was properly imputed to employer. Since employer failed to establish it filed a timely Section 30(a) report, the Section 13 statute of limitations was tolled pursuant to Section 30(f). *Steed v. Container Stevedoring Co.*, 25 BRBS 210 (1991).

Where claimant had not yet lost any time due to his work injury at the time employer completed its LS-202 form, the Board, relying on the Preamble to the Final Rules Implementing the 1984 Amendments and a February 13, 1986 Departmental Notice to employers and carriers, held that the form was not sufficient to satisfy the requirements of Section 30(a) and to start the Section 13(a) time limitations running. If an injury does not result in lost time, employer is not required to file a report and the filing of a report does not cause the time limitation to commence. Since employer's LS-202 failed to specify any loss of time from work, as none had yet occurred, and employer did not amend its form or file a new one, the Board reversed the administrative law judge's finding that employer satisfied the requirements of Section 30(a). Because employer's failure to comply with Section 30(a) tolls the Section 13(a) filing limitation, the Board reversed the administrative law judge's finding that the claim was barred under Section 13. *Nelson v. Stevens Shipping & Terminal Co.*, 25 BRBS 277 (1992) (Dolder, J., dissenting).

The Board reversed the administrative law judge's finding that the death benefits claim was timely filed in this asbestosis case after holding that employer's lack of knowledge rebutted the Section 20(b) presumption as a matter of law. In the instant case, employer did not have knowledge of decedent's work-related death before the claim was filed in 1992, well after the limitations period expired in May 1989. Therefore, employer's failure to file a Section 30(a) report cannot toll the statute of limitations as the claim was already time-barred by the time employer gained knowledge of the injury or death. *Blanding v. Oldam Shipping Co.*, 32 BRBS 174 (1998), *rev'd in pert. part sub nom. Blanding v. Director, OWCP,* 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999).

Reversing this decision, the Second Circuit held that employer and carrier did not rebut the Section 20(b) presumption. The court held that the carrier's controversion indicating that the date employer learned of the decedent's death was "unknown" was insufficient to rebut the presumption, as it did not indicate that employer lacked knowledge of the decedent's work-related death before the claim was filed in 1992 and as there was no evidence in the record indicating when the carrier learned of the decedent's death. The court also held that claimant's returned claim form (undeliverable by the post office) did not constitute substantial evidence that employer lacked knowledge of the decedent's work-related death before 1992, and that the carrier presented no evidence that it lacked knowledge of the decedent's work-related death prior to 1992. Thus, the court held that employer and carrier's failure to file a Section 30(a) report tolled the statute of limitations under Section 30(f) and reinstated the administrative law judge's award of death benefits. *Blanding v. Director, OWCP*, 186 F.3d 232, 33 BRBS 114(CRT) (2d Cir. 1999).

The Board affirmed the administrative law judge's finding that the information contained in a medical report and letter from claimant's counsel to employer's claims administrator was sufficient to provide employer with knowledge that claimant suffered from a work-related respiratory impairment for which compensation liability was possible. Because employer's failure to timely file a Section 30(a) report tolled the Section 13(a) statute of limitations, the Board affirmed the administrative law judge's finding that the claim was timely filed. *Bustillo v. Sw. Marine, Inc.,* 33 BRBS 15 (1999).

The administrative law judge reasonably found employer had adequate knowledge of the possible work-relatedness of decedent's death by drowning on January 12, 2015, to warrant further investigation and to require the filing of a Section 30(a) report. These circumstances included an argument and altercation with the base commander following a party on the base, the location of the base on the ocean, and the investigation of the death by the Navy. Because employer did not file a Section 30(a) report until January 31, 2018, employer did not rebut the Section 20(b) presumption and Section 30(f) tolled the time for claimant to file her claim until that date. The Board thus affirmed the finding that claimant's claim, filed on February 12, 2018, was timely. *Sabanosh v. Navy Exch. Serv. Command*, __ BRBS __ (2020).

Section 30(e)

Section 30(e) provides that any employer or carrier "who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement or misrepresentation." 33 U.S.C. §930(e).

Digests

The Board dismissed the appeal of an assistant deputy commissioner's Order for lack of jurisdiction, reasoning that review of the assistant deputy commissioner's assessment of a Section 30(e) penalty will involve factual determinations and that the case thus should be referred to an administrative law judge rather than appealed to the Board. *Anweiler v. Avondale Shipyards, Inc.*, 21 BRBS 271 (1988).