

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA SANGWIN and U.S. POSTAL SERVICE,
POST OFFICE, Hiwasse, Ark.

*Docket No. 97-1049; Submitted on the Record;
Issued December 10, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's July 25, 1996 claim for an occupational disease was untimely filed pursuant to 5 U.S.C. § 8122(a).

The Board has duly reviewed the case record in this appeal and finds that the Office properly determined that appellant's July 25, 1996 claim for an occupational disease was untimely filed pursuant to 5 U.S.C. § 8122(a).

On July 25, 1996 appellant, then a retired postmaster, filed a claim for an occupational disease (Form CA-2) alleging that she first became aware of her right foot condition on August 12, 1989. Appellant also alleged that she first became aware that her right foot condition was caused or aggravated by her employment on April 22, 1992. The reverse of the form indicated that appellant was last exposed to conditions alleged to have caused her disease or illness on September 29, 1992.

By decision dated October 29, 1996, the Office denied appellant's claim on the grounds that it was untimely filed.

In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act states that "an original claim for compensation for disability or death must be filed within three years after the injury or death."¹ Section 8122(b) of the Act 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,

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

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, appellant indicated on her Form CA-2, that she first became aware that her foot condition was caused or aggravated by her federal employment on April 22, 1992. Appellant stated that her work load increased and that she had to stand all day. Appellant also stated that the orthotist told her that she might have to stay off her foot to allow it to get better. In a September 1, 1996 letter, in response to the Office's August 29, 1996 letter requesting that the employing establishment provide whether appellant's immediate supervisor had actual knowledge of the condition within 30 days, appellant stated that April 22, 1992 was the date that the orthotist told her that she might have to stay off her foot for an extended time to allow it to get better. A July 8, 1996 medical report from Dr. Billy V. Hall, a general practitioner, indicated that he had been treating appellant for recurrent infections of her right foot since August 12, 1989. Dr. Hall stated that over the years, appellant's cellulitis had progressed and caused osteomyelitis of the bones of the foot. Dr. Hall opined that this condition had resulted in appellant being totally and permanently disabled. Dr. Hall further opined that appellant's condition had been aggravated by her work at the employing establishment.

Appellant retired from the employing establishment on September 29, 1992, and thus, ceased to be exposed to the implicated employment conditions by that date. Although Dr. Smith opined on July 8, 1996 that appellant's right foot condition had been aggravated by her work at the employing establishment, appellant's statements establish that she believed that there was a relationship between her right foot condition and her work on April 22, 1992. Therefore, the time limitations began to run on September 29, 1992, appellant's last day of work and exposure to the implicated employment factors. Since appellant did not file a claim until July 25, 1996, her claim was clearly filed outside the three-year time limitation period.

In seeking to justify her delay in filing a claim, appellant, in her Form CA-2, described her right foot condition and stated that "I did not realize I could get any help with it, so when the early out came along I took it." The Board finds that this contention is tantamount to ignorance of the law, which provides no basis for tolling the time limitations.⁴

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if her immediate supervisor 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.⁵ Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.

In the present case, however, the record contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. In her September 1, 1996 response to the Office's August 29, 1996 letter, appellant stated that as the postmaster, she did not have an immediate supervisor and that at the time of her injury, the

³ *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁴ *Charlene B. Fenton*, 36 ECAB 151 (1984); 5 U.S.C. § 8122(d)(2).

⁵ 5 U.S.C. § 8122(a)(1).

only choice she had was to continue working or to quit her job which she did when the employing establishment made an early-out offer in 1992. However, in response to the Office's August 29, 1996 letter, Nancy Carmichael, an employing establishment employee, submitted an October 25, 1996 letter revealing that Zahn Lewis, a retired director of the employing establishment's field operations at Fort Smith, Arkansas, was appellant's immediate supervisor. Ms. Carmichael explained that in a telephone conference with Mr. Lewis, as well as, Randy Hamlin, an employing establishment human resources manager, Mr. Lewis stated that he did not have any knowledge of appellant's alleged August 12, 1989 occupational disease or injury. Ms. Carmichael further explained that Mr. Lewis stated that appellant did not inform him or file any reports indicating any on-the-job injury prior to her retirement on September 29, 1992. Ms. Carmichael then explained that Mr. Lewis stated that to the best of his knowledge, appellant was in good health, left her job in full-duty status and was able to work at the time of her retirement. Ms. Carmichael stated that no medical condition was presented to the employing establishment. Ms. Carmichael further stated that even though Mr. Lewis did not have any knowledge of an alleged occupational disease or injury, he did have some concern about appellant's weight and whether it was possibly relevant to appellant's medical condition. Inasmuch as the employing establishment did not have any actual or written notice of appellant's injury within 30 days, appellant has not established that she timely filed her claim for compensation within the applicable time limitations of the Act.⁶

The October 29, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
December 10, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Charles B. Fenton, supra* note 4.