

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of THOMAS R. POLEFKO and U.S. POSTAL SERVICE,  
POST OFFICE, Akron, Ohio

*Docket No. 96-1117; Submitted on the Record;  
Issued February 3, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and finds that appellant's claim was not timely filed.

In the present case, appellant, a letter carrier, filed a claim on July 20, 1995, alleging that he was examined on September 2, 1986 by Dr. Steurer, Jr., who advised that appellant had positive bilateral Phalen's and Tinel's signs at the wrist and diminished sensation in the medial nerve distribution of both hands. Appellant stated that during a March 2, 1995 medical examination he was advised he had the same findings and that his diagnosis was carpal tunnel syndrome. The employing establishment advised the Office on August 15, 1995, that appellant had not worked at the employing establishment for over 10 years, due to a previous on-the-job injury and that appellant's compensation benefits had been terminated for this other injury when he refused an offer of suitable work. In a supplemental letter dated August 25, 1995, appellant advised the Office that he believed the pain in his wrist and hands was caused by repetitive motion of casing mail as a letter carrier; that he reported this pain in 1986 and was examined by Dr. Steurer on September 2, 1986. On November 8, 1995 appellant advised the Office that his date of injury was 1986 not March 1995. By decision dated February 9, 1996, the Office denied appellant's claim as untimely filed.

Section 8122 of the Act<sup>1</sup> provides that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death." Subsection (b) of this section adds that in latent disability cases the time for filing a claim begins to run when the

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<sup>1</sup> 5 U.S.C. § 8122.

employee first becomes aware, or reasonably should have been aware, of a possible relationship between his condition and his employment. Where the employee continues in the same employment, after such awareness, the time limitation begins to run on the date of his last exposure to the implicated factors.<sup>2</sup>

In the instant case, appellant has stated that he knew as of September 6, 1986 that he had a bilateral wrist condition, which he attributed to repetitive use of his hands in his federal employment. Appellant is not alleging a latent disability, but rather has acknowledged that he had the same medical findings in 1995 as in 1986. Appellant's date of last exposure to the factors alleged to have caused his condition is unclear from the record, but appears by the report of the employing establishment to have been some 10 years prior to 1995. Since appellant's claim was not filed until July 20, 1995, it did not satisfy the three-year time limitation period.

Appellant's claim still would be regarded as timely under 5 U.S.C. § 8122 if his "immediate superior had actual knowledge of the injury ... within 30 days." This provision removes the bar of the three-year time limitation if met.<sup>3</sup> In this case, this provision would mean that the claim would be regarded as timely if the immediate superior knew of the injury within 30 days of appellant's last exposure to the implicated employment factors, or of the September 2, 1985 medical evaluation, whichever was later. Appellant has not alleged, nor is there any evidence of record that appellant's immediate superior had such knowledge.<sup>4</sup>

Finally, there are no "exceptional circumstances" within the meaning of section 8122(d)(3) which would permit the Office to excuse appellant's failure to comply with the time limitation. Appellant asserted that one reason for the delay in filing his claim was that while he was advised in 1986 that he has positive findings on medical evaluation, including positive bilateral Phalen's and Tinel's signs at the wrist and diminished sensation in the medial nerve distribution of both hands, his condition was only diagnosed as bilateral carpal tunnel syndrome during a 1995 examination. Appellant has admitted that his medical examination findings in 1986 were the same as the findings in 1995. Appellant has not submitted any medical reports from 1986 to the record to substantiate any misdiagnosis and to establish that he was misled as to the cause of the bilateral wrist condition, such that he should not have reasonably been aware of the possible relationship between the condition and his employment.<sup>5</sup>

For the foregoing reasons, the Board finds that appellant's claim was not timely filed in accordance with the three-year time limitation provision of 5 U.S.C. § 8122.

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<sup>2</sup> *Hugh Messengill*, 43 ECAB 475 (1992).

<sup>3</sup> *See John Giovanni Carrollo*, 41 ECAB 778 (1990).

<sup>4</sup> There is also no evidence of record that appellant gave notice of his wrist injury as part of his other claim for compensation benefits which apparently arose from a shoulder injury.

<sup>5</sup> *Supra*, note 2.

The decision of the Office of Workers' Compensation Programs dated February 9, 1996 is hereby affirmed.

Dated, Washington, D.C.  
February 3, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member