

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ESTELLA A. WILSON and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, Texas

*Docket No. 96-2061; Submitted on the Record;
Issued June 19, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

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

On January 16, 1996 appellant, a 31-year-old clerk, filed a Form CA-2 claim for benefits for an occupational disease based on a chronic foot condition. Appellant stated that the employing establishment issued her a pair of oversized, steel toed combat boots, which made her feet slide inside the boots, causing her feet to rub against the steel plate, resulting in pain, irritation, swelling and raw spots.¹ Appellant claimed she first became aware of this condition in November 1987 and first reported it to her supervisor on November 28, 1994.

Appellant submitted a June 16, 1995 letter from a podiatrist, Dr. Morris A. Stribling, who stated he had treated appellant since 1990. Dr. Stribling stated that appellant had a history of diabetes mellitus and that she had related sensations of diabetic neuropathy subjectively including numbness, sharp pains and tingling sensations. Based on these findings Dr. Stribling diagnosed diabetic peripheral neuropathy, which he indicated had been aggravated by the shoe gear the employing establishment had issued appellant. Dr. Stribling felt that because of the abnormal sensations appellant experienced, the shoe gear issued by the employing establishment was ill-fitting for an individual with her diagnosis.

Dr. Stribling opined that he did not expect appellant would have a full or partial recovery, or even remission, because of the continuing onslaught of the diabetic neuropathy and

¹ In a handwritten statement dated January 31, 1996, received by the Office on February 15, 1996, appellant stated that her supervisor issued her these boots about a month after she was hired as part of her job safety procedures. Appellant stated that she was forced to seek treatment from a podiatrist to reduce the discomfort caused by these shoes.

recommended prescription shoe gear to relieve some of the pressure on her feet due to the diabetic neuropathy.

Appellant also submitted a September 8, 1995 report from Dr. Mark A. Rodriguez, a Board-certified family practitioner, who stated that appellant's job requirements placed her in danger of further damage to her feet, including possible amputation and that appellant had developed increased anxiety and a nervous tic due to her work-related foot problems.

Appellant's immediate supervisor submitted a letter to the Office dated January 31, 1996, indicating that appellant had been under his supervision since October 17, 1994. The supervisor stated that appellant was under her doctor's care for diabetic peripheral neuropathy as of December 1994, that her statement was very accurate and that her physician's letters verified her condition. The supervisor further stated that appellant missed 41 days of work from December 12, 1995 through January 30, 1996 due to her diabetic peripheral neuropathy.

The employing establishment submitted a letter dated February 9, 1996, in which it contended that it did not support appellant's claim, because it had accommodated appellant's condition to the best of its ability and that based on the medical evidence and a review of the occupational history it was highly unlikely that appellant's job contributed significantly to her current condition.

By letter dated March 14, 1996, the Office requested information concerning the supervisor's knowledge of appellant's occupational disease claim, in addition to other information concerning her delay in filing. The Office specifically asked whether appellant was still exposed to the same injurious employment-related conditions that she had been exposed to in November 1987, whether written notice of injury was given within 30 days after occurrence of injury in November 1987, whether her immediate supervisor had actual knowledge of the injury within 30 days after the occurrence of the injury and whether there was anything in her records containing communication from the employee [or on her behalf,] which might contain a claim or a statement constituting notice of an injury. The Office also requested that appellant submit copies of letters from her supervisor requesting special safety shoes and medical evaluations.

In a March 27, 1996 handwritten letter responding to the Office's request, appellant's supervisor stated that appellant was no longer exposed to the same injurious conditions that she had been exposed to in November 1987 and that her date of last exposure was April 15, 1990. With regard to the question of whether her immediate supervisor had actual knowledge of the injury within 30 days after its occurrence, the supervisor stated that her situation was not considered an on-the-job injury by her supervisor at the time and that she had been sent to the employing establishment's clinic so that tailor-made shoes could be prescribed to help her comply with employment conditions in a foot-hazardous area. The supervisor advised that her former supervisor had no knowledge of an on-the-job injury, because appellant was unable to wear the existing safety equipment and was loaned out of the area to a nonfoot hazardous detail so that her condition would not worsen. The supervisor stated that there were no claims or statements asserting that an injury had occurred in appellant's personnel file.

By decision dated May 8, 1996, which incorporated a memorandum to the Director, the Office denied appellant's claim for an occupational disease or condition on the grounds that her

claim was not timely filed under Section 8122.² The claims examiner noted that appellant was aware, or reasonably should have been aware of a relationship between employment factors and the claimed condition by November 1987, that the injury had occurred on April 15, 1990, but that written notice of the injury was not provided until January 16, 1996.

The Board finds that the Office properly denied appellant's compensation claim for an occupational disease or condition on the grounds that her claim was not filed within the applicable time limitation provisions of the Act.

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."³ 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.⁴ The statute provides an exception, which states that a claim may be regarded timely if an immediate superior 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

In the instant case, appellant stated that she became aware of her foot condition in November 1987, the date she began to experience severe discomfort from the shoes issued by the employing establishment and the Office found that an injury occurred as of April 15, 1990, the date she was transferred to a nonfoot-hazardous worksite. Appellant, however, did not file an occupational disease claim until January 16, 1996, which was not within the three-year time limitation set forth in the statute. The evidence does not indicate that appellant provided any notice of injury to her supervisor prior to this time, or that anything occurred to make her supervisor reasonably aware that she sustained an occupational disease or condition relating to her employment. The Board, therefore, finds that the Office properly denied appellant's compensation claim on the grounds that her claim was not filed within the applicable time limitation provisions of the Act.

² 5 U.S.C. § 8122.

³ 5 U.S.C. § 8122(a).

⁴ 5 U.S.C. § 8122(b).

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

The decision of the Office of Workers' Compensation Programs dated May 8, 1996 is hereby affirmed.

Dated, Washington, D.C.
June 19, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member