

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TONY GIBBS and DEPARTMENT OF THE NAVY,
MILITARY SEALIFT COMMAND, Oakland, Calif.

*Docket No. 96-1256; Submitted on the Record;
Issued March 9, 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 determined that appellant's May 15, 1995 claim was barred by the applicable time limitation provision of the Federal Employees' Compensation Act.

In the present case, appellant filed an occupational disease claim dated August 12, 1987, indicating that he had pain in the right arm, numbness in fingers and a sore wrist.¹ The claim was denied in an Office decision dated December 11, 1987. In a decision dated July 29, 1993, the Office determined that appellant's request for reconsideration was untimely and failed to show clear evidence of error.² The record indicates that appellant had also filed an occupational claim for carpal tunnel syndrome dated August 23, 1991.

On May 15, 1995 appellant filed an occupational claim for carpal tunnel syndrome causally related to use of tools, heavy lifting and hammering in his federal employment. The reverse of the claim form indicated that appellant was last exposed to the alleged work conditions on July 21, 1992 and that appellant was removed from employment effective February 12, 1993. By decision dated January 4, 1996, the Office denied the claim on the grounds that it was untimely filed. In a decision dated February 27, 1996, the Office denied appellant's request for reconsideration without review of the merits of the claim.

The Board has reviewed the record and finds that appellant's claim was timely filed.

¹ Appellant initially filed a traumatic injury claim on July 7, 1987 for the same alleged injuries, indicating that the date of injury was June 18, 1987.

² This decision was affirmed by the Board in a decision dated March 21, 1995 (Docket No. 93-2442).

Section 8122(a) of the Act states, “An original claim for compensation or death must be filed within three years after the injury or death.”³ This section also indicates that a claim not filed within 3 years will not be allowed unless the immediate supervisor had actual knowledge of the injury or death within 30 days or written notice of injury was given within 30 days.⁴ 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 his employment and the compensable disability.⁵

Before addressing the May 15, 1995 claim, the Board notes that appellant did file an occupational claim dated August 23, 1991 for carpal tunnel syndrome. It is not clear from the record when the claim was forwarded by the employing establishment to the Office. The copy of the August 23, 1991 claim is date stamped by the Office as received on April 16, 1993, although the Office was aware of its existence as of March 1992.⁶ The Office apparently interpreted the new claim as a request to reopen his prior claim. Appellant, however, also submitted on April 16, 1993 a letter discussing his work activities through August 1991, stating that his physician had indicated this type of work contributed to his carpal tunnel syndrome. It is evident that the August 23, 1991 claim was in fact a new claim for injury, with employment factors after August 1987 alleged as contributing to his condition. To the extent that appellant is claiming that his carpal tunnel syndrome is causally related to employment activity occurring after the August 1987 claim, it is appropriately considered a new claim that must be adjudicated by the Office.

With respect to the claim filed on May 15, 1995, appellant again attributes his carpal tunnel syndrome to continuing exposure to factors such as tools, hammering and heavy lifting. Since the record indicates that he continued to be exposed to the alleged work factors through July 21, 1992, appellant has therefore filed a new claim for injury based on exposure to implicated work factors through July 21, 1992. The Office found that appellant was aware of a relationship between carpal tunnel and employment factors by 1991, and therefore his claim was untimely. The initial question presented, however, is whether the claim was filed within three years of the date of “injury,” which is the date of last exposure to the implicated factors in an occupational claim.⁷ The May 15, 1995 claim was filed within three years of the date of last exposure to the implicated work conditions and therefore it is timely.

³ 5 U.S.C. § 8122(a).

⁴ *Id.*

⁵ 5 U.S.C. § 8122(b).

⁶ The Office sent a letter dated March 23, 1992 to appellant, noting that appellant had filed a Form CA-2 dated August 23, 1991 with his employer.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993), provides that in occupational disease claims, “time begins to run when the injured employee becomes aware, or reasonably should have been aware, of a possible relationship between the disease or condition and the employment. Where the exposure to possible injurious employment-related conditions continues after this knowledge, the time for filing begins to run on the date of the employee’s last exposure to the implicated conditions.”

The Board accordingly finds that appellant has timely filed occupational claims dated August 23, 1991 and May 15, 1995 which must be adjudicated by the Office. On return of the case record, the Office should issue an appropriate decision on the merits of these claims.

The decisions of the Office of Workers' Compensation Programs dated February 27 and January 4, 1996 are reversed.

Dated, Washington, D.C.
March 9, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member