U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GRADY PARKER and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION REGIONAL OFFICE, Detroit, Mich.

Docket No. 97-258; Submitted on the Record;
Issued January 26, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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 provisions of the Federal Employees' Compensation Act.

On June 5, 1996 the Office received a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) from appellant, giving the date of notice as November 8, 1990.[1] Appellant alleged that from performing his duties as a file clerk, *i.e.*, appellant pulled envelopes of claims documents, stamped envelopes and typed on the computer, he developed carpal tunnel syndrome in his left wrist.

By letter dated June 14, 1996, the Office requested detailed factual and medical information from appellant and sent a copy of the letter to the employing establishment. By an undated statement, appellant responded to the factual portion of the Office's request for information.[2] Appellant stated that his condition occurred while "I was working at the Social Security Administration office when the injury occurred and also going to school for typing at the Bright Center." Appellant went on to say that he did not file his claim sooner "because the [employing establishment] withheld information from me that I couldn't file at that time." He further stated that his left wrist was swollen and he could not lift or type anything with that hand. Appellant also stated that he worked eight months as a file clerk.

On September 14, 1995 the record was updated to include medical records from the emergency department of the Detroit Osteophathic Hospital which indicated that appellant was

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[1] The reverse side of the form was not completed, but a copy of the reverse side was also submitted. It was signed by an employing establishment vocational rehabilitation specialist and dated November 21, 1995. The record indicates that the claim form was received directly from appellant.

[2] Appellant's statement was undated and was not stamped in by the Office.

seen on October 15, 1990 as an outpatient for complaints of painful swollen left hand and arm. Appellant was treated with ice, rest and elevation of the left arm and hand and was advised to return if symptoms worsened or follow up with his family doctor in five days if symptoms persist. A final diagnosis was given as carpal tunnel syndrome of the left hand.

The record included medical records, progress notes and laboratory results from the employing establishment covering the period November 1990 to September 1995.[3] The records indicated that appellant suffered from various medical problems, but only briefly referred to carpal tunnel syndrome. A wrist splint was recommended, however, there was no test results to confirm such a diagnosis.

On July 1, 1996 the Office received a June 27, 1996 letter from the employing establishment in response to the June 14, 1996 request for information. The employing establishment stated that "At the time of the alleged injury [appellant] was a veteran receiving [veterans] education benefits under the [chapter] 31 rehabilitation program." It went on to say that "[Appellant] participated in the [employing establishment's] unpaid federal work experience programs and was assigned to work for the Social Security Administration beginning July 30, 1990. He was terminated in October 1990." It was further stated that appellant's job duties consisted of photocopying, filing, reviewing incoming and outgoing mail and miscellaneous clerical duties. It was also stated that, "On October 15, 1990 [appellant] apparently did go to the doctor in the morning." "He did not inform social security or the [employing establishment] of any work-related injury and did not at that time ever claim any work-related illness or injury. The doctor's statement returned him to work the next day, October 16, 1990." The employing establishment also stated that, "Our first indication that [appellant] felt this visit to the doctor was based on a work-related condition was in November 1995." The employing establishment stated that appellant began another unpaid work contract with the internal revenue service on November 14, 1990 which ended August 26, 1991 due to various medical conditions, however, left arm/wrist pain was not mentioned or included in the reasons reported for discontinuance. Submitted with the letter was a medical certificate dated October 15, 1990 from the Detroit Osteophathic Hospital signed by Dr. James Duren and stating that appellant was seen that day at the hospital and was to return to work on October 16, 1990; and a July 25, 1990 letter from the employing establishment to the social security administration indicating that appellant was available for clerical/data entry work.

By decision dated July 18, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that the claim for compensation was timely filed.

By letter dated July 21, 1996 and received July 24, 1996, appellant requested reconsideration of the July 18, 1996 decision. In support, appellant stated that he filed a CA-1 form with an employing establishment rehabilitation counselor who never turned in the form. Appellant also stated that he was still waiting for a decision by the employing establishment's board of military-connected conditions on his claim for carpal tunnel of his left wrist. Appellant further stated that he believed that the employing establishment's rehabilitation counselor has

[3] The record does not indicate when or from whom the medical records and progress notes were received.

evidence on file about his wrist condition and had requested that the evidence be sent to the Office.

By decision dated July 30, 1996, after a merit review, the Office denied appellant's claim on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

By letter dated August 11, 1996, appellant requested reconsideration of the July 30, 1996 decision. In support appellant restated much of what he contended in his July 21, 1996 letter.

By decision dated September 12, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to warrant a review of the prior decision.

The Board finds that the Office properly denied appellant's compensation claim for carpal tunnel syndrome on the grounds that his claim was not filed within the applicable time limitation provisions of the Act.

Section 8122 of the Federal Employees' Compensation Act[4] provides that an original claim for compensation must be filed within three years after the injury for which compensation is claimed.[5] A claim may be allowed notwithstanding the time limitation if the employee's immediate supervisor had actual knowledge of the injury within 30 days of its occurrence, or if written notice of the injury was given within 30 days pursuant to 5 U.S.C. § 8119.[6]

Appellant stated that on October 15, 1990 he sustained a swollen left wrist and "caused me to have carpal tunnel syndrome in my left wrist." In a traumatic injury claim, the time limitation would begin to run as the date of the injury which would be no later than November 14, 1990. There is no indication in the case record that appellant filed a claim for a traumatic injury to his left wrist by November 14, 1990 or prior to his claim which the employing establishment received November 21, 1995. As appellant had not filed a claim for a traumatic wrist injury within three years of the injury, his claim for a traumatic injury was untimely.

Appellant also did not make a timely claim for any occupational disease. For time limitation purposes under the Act, time begins to run from the time a claimant first relates his condition to factors of his employment. If a claimant continues to work after the time he first relates his condition to his employment, then time begins to run on the date of last exposure to the factors of employment which he claims were causally related to his occupational disease.[7] The record indicates that appellant's last exposure to the employment factors to which he attributes his injury was in 1990.

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8122(a).

[6] 5 U.S.C. § 8122(a)(1)-(2).

[7] *Garyleane A. Williams*, 44 ECAB 441 (1993).

Due to appellant's contention that he filed a timely Form CA-1 with the employing establishment, which was not forwarded to the Office, the Office contacted appellant's employing establishment who in turn contacted the agency where appellant worked in a training program. The employing establishment informed the Office that after talking with people and checking records relating to his 1990 work assignment, no evidence was found of any verbal or written notice that any wrist condition was related to the training program or work done through October 1990 and that first such notice to the employing establishment was in 1995. In the instant case, appellant stated that he has known since he first received care for the left wrist in October 1990 that he felt it was related to his duties at the employing establishment training program. Therefore, the Board finds that appellant had knowledge of his condition and its possible work relatedness at least by October 1990. As appellant's claim was not filed until November 1995, five years after time began to run, his claim was untimely as it was not filed within the three-year time limitation specified by the Act.

The Board also finds that the refusal of the Office, in its September 12, 1996 decision, to reopen appellant's case for further consideration of the merits of his claim under 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.[8] When a claimant fails to meet at least one of the above standards, the Office will deny the application for review without reviewing the merits of the claim.[9]

In her request for reconsideration postmarked August 30, 1996, appellant did not show that the Office erroneously applied or interpreted a point of law, nor did he advance a point of law or a fact not previously considered by the Office, nor did he submit any new factual or medical evidence to support his allegations.

As appellant's August 30, 1996 request for reconsideration does not meet at least one of the three requirements for obtaining a merit review, the Board finds that the Office did not abuse its discretion in denying that request.

[8] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128.

[9] 20 C.F.R. § 10.138(b)(2).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated September 12, July 30 and 18, 1996 are affirmed.

Dated, Washington, D.C.
January 26, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member