

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WAYNE M. HAUKOOS and DEPARTMENT OF AGRICULTURE,
MEAT & POULTRY INSPECTION SERVICE, Minneapolis, Minn.

*Docket No. 97-2025; Submitted on the Record;
Issued March 24, 1999*

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 claim for compensation is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

The Board finds that the Office properly determined that appellant's claim for compensation is barred by 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."¹ 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.² The Board has held that 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 filed an occupational disease claim on July 19, 1996 alleging that he sustained a hearing loss in his right ear due to exposure to hazardous noise at work. He indicated that on August 30, 1985 he first realized that the claimed condition was caused or aggravated by his employment. Appellant last worked for the employing establishment on April 26, 1985. By decision dated May 8, 1997, the Office denied appellant's claim on the grounds that it was barred by the applicable time limitation provisions of the Act.

In the present case, the evidence establishes that appellant was aware of the causal relationship between his employment and the claimed compensable disability as early as August 30, 1985. In a statement dated July 19, 1996, appellant stated that on August 30, 1985 he

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

³ *Charlene B. Fenton*, 36 ECAB 151, 157 (1984); *Gladys E. Olney*, 32 ECAB 1643, 1645 (1982).

first realized that the claimed condition was caused or aggravated by his employment. The record reveals that on August 30, 1985 underwent a surgical repair of a perforation in his right tympanic membrane; in a statement accompanying his claim, appellant indicated that around the time of his surgery in 1985 it became difficult for him to understand people who spoke to him “[b]ecause of working in an environment of constant high volume levels.” Therefore, the time limitation in appellant’s case began to run no later than August 30, 1985. Since appellant did not file a claim until July 19, 1996, his claim was not filed within the three-year period of limitation.⁴

Appellant’s claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days⁵ or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119.⁶ Appellant has not made any claim that he has satisfied either of these provisions, nor does the record support a finding that he has satisfied either of them.⁷

The decision of the Office of Workers’ Compensation Programs dated May 8, 1997 is affirmed.

Dated, Washington, D.C.
March 24, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁴ Appellant’s last possible exposure to the implicated employment factors, *i.e.*, hazardous noise, occurred no later than April 26, 1985. As noted above, if an employee continues to be exposed to injurious working conditions after an awareness of an employment-related cause, the time limitation begins to run on the last date of this exposure. Because appellant’s last date of exposure, April 26, 1985, was prior to his date of awareness, August 30, 1985, the time limitation began to run no later than August 30, 1985.

⁵ 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

⁶ 5 U.S.C. §§ 8119, 8122(a)(2).

⁷ The record does not contain any record of hearing testing performed by the employing establishment.