

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTOPHER NORTH and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, CA

*Docket No. 98-675; Submitted on the Record;  
Issued November 12, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
DAVID S. GERSON

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 January 15, 1997 appellant, then a 52-year-old former postal clerk, filed an occupational disease claim for hearing loss. Appellant indicated that on March 19, 1990 he first became aware that he had a loss of hearing. He further related that on January 5, 1995 an audiologist informed him that his hearing loss was due to "exposure to very loud, sustained noise over a long period of time" at which point he realized that his hearing loss was related to his work with the employing establishment from November 1973 to December 1974.

In a statement accompanying his claim, appellant indicated that during his work as a keyer on a letter sorting machine at the employing establishment from November 1973 to December 1974 he was exposed to noise from the machines in the room, conveyances moving bags of mail and loud background music. Appellant stated:

"Shortly after I stopped working for the [employing establishment], my wife Diana noticed that I had become conversationally loud whereas in the past, I had been much more soft spoken. Also, she found that I was now starting to turn the [television] and radio volume up much louder. She noted that I did not respond to her when she spoke to me at times. Because I was relatively young, the idea that hearing loss was the reason for these difficulties did not occur to either of us for a long time."

Appellant related that in March 1990, at the suggestion of his wife, he had his hearing tested and that testing revealed "moderate to severe high frequency sensorineural hearing loss in both ears about equally." Appellant indicated that he underwent another audiogram in September 1994 and that the audiologist noted the same findings and recommended hearing aids.

Appellant stated that on January 5, 1995 he purchased a hearing aid from an audiologist who, in response to his inquiry regarding the cause of his hearing loss, attributed the loss to exposure to sustained loud noise over a prolonged period. Appellant stated that, after he described his work at the employing establishment, the audiologist “was sure that his hearing loss was caused by his employment with the [employing establishment].”

Appellant submitted audiograms dated March 19, 1990 and September 27, 1994, which revealed bilateral high frequency sensorineural hearing loss. Appellant also submitted wage and tax information for 1974 and 1975 indicating that he worked for the employing establishment.

In a letter dated June 11, 1997, the employing establishment informed the Office that appellant had resigned 22 years prior and that it had no records that extended that far back in time.

In a report dated January 21, 1997, Dr. Gregory S. Parsons, a Board-certified otolaryngologist, discussed appellant’s work at the employing establishment for 13 months in the 1970’s and diagnosed noise-induced hearing loss.

By letter dated August 5, 1997, the Office requested further information from appellant regarding his delay in filing a claim for compensation. Specifically, the Office inquired about his extensive wait before having his hearing tested in view of the fact that his symptoms of hearing loss began shortly after he stopped working for the employing establishment. The Office further requested that appellant explain his failure to pursue the cause of his hearing loss after learning the results of his 1990 audiogram.

In a letter dated August 20, 1997, appellant related that after he stopped working for the employing establishment he felt he was too young to have a loss of hearing and that by 1990 he felt that his hearing loss was due to aging.

By letter dated August 25, 1997, the employing establishment informed the Office that it had no employment records or health records for appellant.

By decision dated December 3, 1997, the Office denied appellant’s claim for compensation on the grounds that his claim was not timely filed. The Office found that appellant should reasonably have been aware of his employment-related hearing loss due to the symptoms of hearing loss which followed his cessation of employment. The Office further found that appellant did not use reasonable diligence when he failed to inquire about the cause of the hearing loss demonstrated on the 1990 audiogram until 1995, five years later.

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

Where an employee has sustained a loss of hearing as a result of excessive noise at work over a period of time, the date of injury is determined to be the date of the last noise exposure which adversely affected his hearing.<sup>1</sup> In the present case, appellant’s date of injury would be

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<sup>1</sup> *Solomon R. Stone*, 32 ECAB 150 (1980).

December 1974, the date he ceased working for the employing establishment. Section 8122(a) of the Act, which is applicable to injuries occurring subsequent to September 7, 1974, states, “an original claim for compensation for disability or death must be filed within three years after the injury or death.”<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

In the present case, appellant filed his January 5, 1997 claim more than 20 years after the date of his last exposure to employment-related noise in December 1974. Appellant contends that he did not know his hearing loss was employment related until January 5, 1995, when an audiologist informed him that his hearing loss was consistent with exposure to loud noise. However, as found by the Office, appellant did not show reasonable diligence when he neglected to inquire about the cause of his hearing loss after he received the results of a March 1990 audiogram.<sup>5</sup> Appellant learned that he had moderate to severe sensorineural hearing loss in March 1990. He obtained a second audiogram in September 1994 which showed moderate sensorineural hearing loss. Appellant did not ask an audiologist for information regarding the cause of his condition until January 1995 and did not file his compensation claim until two years later. The totality of the factual circumstances of record, including appellant’s statement that his wife noticed that he became louder and increased the volume of the television soon after he left the employing establishment, combined with the later testing that revealed moderate to severe hearing loss, establish that appellant, by the exercise of reasonable diligence, should have been aware by at least March 1990 that his claimed injury was due to employment factors. Appellant did not file a claim until January 1995 and thus his claim was not filed within the three-year period of limitation.

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 days<sup>6</sup> or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119.<sup>7</sup>

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<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(b).

<sup>4</sup> *Garyleane A. Williams*, 44 ECAB 441 (1993).

<sup>5</sup> The Office also determined that appellant should have been aware that he had employment-related hearing loss based on his demonstrated decrease in hearing shortly after he left the employing establishment. However, the Board has stated that “a mere showing that an employee worked in a noisy environment and was aware he had a loss of hearing is not, in and of itself, sufficient to support a finding that he was aware or reasonably should have been aware that there was a possible relationship between his hearing loss and his employment.” *Carlos Delaney*, 37 ECAB 795 (1986).

<sup>6</sup> 5 U.S.C. § 8122(a)(1).

<sup>7</sup> 5 U.S.C. §§ 8119, 8122(a)(2).

Appellant has not made any claim that he has satisfied either of these provisions, nor does the record support such a finding.

For these reasons, the Office properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act.

The decision of the Office of Workers' Compensation Programs dated December 3, 1997 is hereby affirmed.

Dated, Washington, D.C.  
November 12, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

David S. Gerson  
Member