

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES J. SCHMIDT, JR. and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, TX

*Docket No. 99-1517; Submitted on the Record;
Issued July 24, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's claim for a back condition was barred by the three-year time limitation provision of section 8122 of the Federal Employees' Compensation Act.

On January 12, 1999 appellant, a 49-year-old jet aircraft maintenance specialist, filed a notice of occupational disease, Form CA-2, alleging that he suffered degenerative changes in his lower lumbar spine as a result of his federal employment. Appellant stated that he became aware of the disease or illness, and that it was caused or aggravated by his employment on November 30, 1995.

In a statement accompanying his claim, appellant indicated that he suffered a prior back injury on November 10, 1991 when he lifted an aircraft tow bar. He stated that his job involved heavy lifting and that, after years of injuring his back, he suffered continuous lower back pain. Appellant further stated that on November 10, 1995 he lifted an 80-pound tire and felt severe pain in his left lower groin. He stated that he continued to work and lifted a 60-pound axle jack, which caused more severe pain in the left groin area. He indicated that he then bent over and a large bulging knot emerged out of his left side. Appellant stated that he underwent an emergency hernia operation and that following the surgery he experienced progressive pain in his lower back vertebrae area. Appellant stated that he felt that he injured his vertebrae when he had his hernia and now his back has permanent damage.

Appellant's supervisor submitted a statement supporting appellant's assertion that his job involved heavy lifting. He stated, however, that appellant had not been absent from work due to his condition.

In a report dated November 24, 1998, Dr. Rosemary Chacko recorded a history that appellant experienced an episode of back pain when he lifted a 150-pound tire, which caused a hernia.

Following an Office request for additional information, appellant again stated that he was changing a tire weighing between 80 and 100 pounds on November 30, 1995 when he felt severe pain on his left groin stomach area and felt his lower vertebrae pop. He stated that he noticed continuous pain following his hernia operation, which resulted from the November 30, 1995 injury.

By decision dated April 7, 1999, the Office denied appellant's claim as it was not filed within the time limitation provision of section 8122 of the Act. The Office noted that the claimed injury occurred on November 30, 1995, but that appellant did not provide written notice of the injury until January 12, 1999. It stated appellant should have been reasonably aware of a relationship between the employment and the claimed condition by November 30, 1995 since the incident described represented a traumatic injury. It further stated that the evidence did not support a finding that appellant's immediate supervisor had actual knowledge of the injury within 30 days of its occurrence. Finally, it noted that, although appellant filed a claim for an occupational disease, Form CA-2, that the incident described on November 30, 1995 constituted a traumatic injury.

The Board finds that the Office properly denied compensation on the grounds that appellant's claim was not timely filed.

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 of death."¹ In cases involving a traumatic injury, the time limitation begins to run at the time of the incident even though the employee may not have been aware of the precise nature of the injury and its ultimate consequences.² 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 supervisor reasonably on notice of an on-the-job injury or death.³

In the instant case, appellant filed a notice of occupational disease, Form CA-2, alleging that his injuries stemmed from a specific employment incident occurring on a single workday, the lifting of a heavy tire and jack on November 30, 1995. Because appellant alleged that his injuries stemmed from a specific employment incident on November 30, 1995, the Office

¹ 5 U.S.C. § 8122(a).

² *Gary W. Hudiburgh, Jr.*, 37 ECAB 423 (1986); *Ray C. Spell*, 31 ECAB 719 (1980).

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

properly determined that appellant actually filed a claim for a traumatic injury.⁴ Moreover, appellant's claim dated January 12, 1999 was untimely because it was not filed within three years of the alleged November 30, 1995 injury. Finally, the record is devoid of any evidence establishing that appellant's immediate supervisor had actual notice of the November 30, 1995 injury. Appellant also failed to assert that his supervisor had such knowledge. Accordingly, appellant's claim is barred by the three-year time limitation provision of section 8122 of the Act.

The decision of the Office of Workers' Compensation Programs dated April 7, 1999 is affirmed.

Dated, Washington, D.C.
July 24, 2000

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See 20 C.F.R. § 10.5(q)(1999); in addition, because appellant's claim is for a traumatic injury, the latent disability provision of section 8122(b) of the Act is not applicable; see 5 U.S.C. § 8122(b). Should appellant attribute his back condition to activities at work occurring over a period longer than the November 30, 1995 workday, he is not precluded from pursuing such a claim.