U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HENRY M. ESPINADA and DEPARTMENT OF THE NAVY, PEARL HARBOR NAVAL SHIPYARD, Pearl Harbor, HI

Docket No. 99-197; Submitted on the Record;
Issued June 19, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that appellant's claim for compensation is barred by the three-year time limitation provision of section 8122 of the Federal Employees' Compensation Act; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to section 8128(a) of the Act.

On November 19, 1997 appellant, then a retired nuclear electrical planner and estimator, filed a claim for carpal tunnel syndrome, which he alleged occurred in the performance of duty due to prolonged use on a daily basis of working with his hands. Appellant began work at the employing establishment on or about October 1, 1959 and retired effective June 28, 1991.

On the Form CA-2 he indicated that he was aware of the carpal tunnel syndrome on June 1, 1988 and first related it to factors of his federal employment on or about June 30, 1993. In the part of the form requesting an explanation for not filing with the employing establishment within 30 days, he stated that he did not want to take advantage of the workers' compensation system and he was retired.

By letter dated March 23, 1998, the Office requested that appellant submit additional information. The Office also requested details from appellant that included a request for evidence establishing that his immediate supervisor had knowledge of the injury within 30 days of the date of injury.

In a statement dated April 3, 1998, appellant indicated that he was not aware of the three-year limitation until he telephoned the Pearl Harbor Naval Shipyard workers' compensation office in October 1997. He indicated that at that time he was informed of the three-year statute of limitation. He also indicated that he was sent the CA-2 form and other information to file his claim.

By decision dated April 23, 1998, the Office denied appellant's claim on the grounds that appellant had not timely filed his claim as required by 5 U.S.C. § 8122.

Appellant requested a review of the written record on April 28, 1998.

In a statement dated June 22, 1998, appellant also stated that he did not know that he could file for workers' compensation for his carpal tunnel syndrome until he visited his doctor on October 31, 1997.

In a decision dated August 26, 1998, the hearing representative affirmed the April 23, 1998 decision of the Office.

By letter dated September 4, 1998, appellant requested reconsideration.

In a decision dated September 17, 1998, the Office issued a decision denying the request for review of the merits. The Office indicated that the evidence in support of reconsideration was cumulative and did not require review of the previous decisions issued in the case.

The Board finds that 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.

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 exercise of reasonable diligence should have been aware, of the causal relationship between the 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 instant case, appellant stated that he first became aware on June 30, 1993 of the connection between his condition and federal employment. Appellant retired from his employment on June 28, 1991 and thus ceased to be exposed to the implicated conditions at least by that date. Since appellant did not file a claim until November 19, 1997, he is clearly outside the three-year limitation period and his claim is, therefore, untimely.

Appellant contended that he was unaware of the time limitation provision because of the lack of information disseminated by the employing establishment. The Board finds that this contention is tantamount to ignorance of the law, which provides no basis for tolling the time limitation.[4]

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[1] 5 U.S.C. § 8122(a).

[2] 5 U.S.C. § 8122(b).

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

[4] *Charlene B. Fenton,* 36 ECAB 151 (1984).

Appellant also indicated that he did not file his claim earlier than the October 31, 1997 report of Dr. David G. Matthews because he was not sure he could file. However, he knew of the connection between the injury and his employment as of June 30, 1993 according to his CA-2 form. The Board has consistently held that the applicable statute of limitations commences to run even though the employee does not know the precise nature of the impairment.[5]

Appellant's claim might have been timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of his employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.[6] An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.[7] However, there is no evidence in the record which indicates that appellant's immediate supervisor had actual knowledge of appellant's injury within 30 days of the date of injury.

Consequently, appellant has not established that he timely filed his claim for compensation within the applicable time limitations of the Act.[8]

The Board further finds that the Office properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

[5] *Edward Lewis Maslowski,* 42 ECAB 839, 846 (1991).

[6] 5 U.S.C. § 8122(a)(1); *see also Jose Salaz,* 41 ECAB 743 (1990).

[7] *Charlene B. Fenton, supra* note 4.

[8] Furthermore, appellant has not shown that he is entitled to have the time limitations tolled due to "exceptional circumstances" as provided by section 8122(d)(3) of the Act; *see* 5 U.S.C. § 8122(d)(3). For instance, an "exceptional circumstance" as recognized by the Secretary of Labor is where an employee is a prisoner of war. Appellant has not shown that he was under that type of circumstance; *see Paul S. Devlin,* 39 ECAB 726 (1988).

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by written request to the Office identifying the decision and the specific issue(s) within the decision, which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

> "(i) Showing that the Office erroneously applied or interpreted a point of law, or
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> "(ii) Advancing a point of law or fact not previously considered by the Office, or
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> "(iii) Submitting relevant and pertinent evidence not previously considered by the Office."[9]

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[10] Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.[11] Evidence that does not address the particular issue involved also does not support a basis for reopening a case.[12]

On September 4, 1998 appellant requested reconsideration of his claim. In his request, appellant argued that his claim was untimely because he was not sure he could file "[w]orkman['s] [c]ompensation for his [c]arpal [t]unnel [s]yndrome [i]njuries-until he visited Dr. Matthews on [September 31, 1997]." He also alleged that he believed his carpal tunnel claim should start on October 31, 1997 or thereafter when he was informed by Dr. Matthews. However, his arguments and the evidence regarding his explanations for filing untimely were previously presented to and considered by the Office. The submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.[13] The Office, therefore, did not abuse its discretion in refusing to reopen and review appellant's claim on the merits.

[9] 20 C.F.R. § 10.138(b)(1).

[10] *See* 20 C.F.R. § 10.183(b)(2).

[11] *Daniel Deparini*, 44 ECAB 657 (1993).

[12] *Id.*

[13] *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

The Board finds that decisions of the Office of Workers' Compensation Programs dated September 17 and August 26, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 19, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member