U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALEXANDER G. SCHNEIDER and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

Docket No. 01-1039; Submitted on the Record;
Issued December 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant's May 20, 1999 claim for an occupational disease was timely filed pursuant to 5 U.S.C. § 8122(a).

On May 20, 1999 appellant, then a 62-year-old former letter carrier, filed a claim for an occupational disease (Form CA-2) assigned number A25-0546337 alleging that on February 6, 1992 he first realized that his laryngeal problems of fibrin and chronic inflammation of the vocal cord were caused or aggravated by his employment. The record reflects that appellant last worked for the employing establishment October 2, 1975.

By decision dated October 19, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that it was untimely filed.

In a letter dated November 2, 1999, appellant requested a hearing. He indicated his belief that the time for filing a claim should begin to run on January 1, 1975, the date he stopped smoking. He further indicated that June 26, 1992 was the date that he reasonably became aware of a causal relationship between his disease and his employment as it was the day he became aware or believed that there was a chance of cancer in his throat. In a letter dated January 14, 2000, appellant asserted that his throat problems may be due to his on-the-job injury of October 2, 1975. In his July 20, 2000 hearing, appellant testified that he believed his laryngeal problems were caused by a 1973 fall at work, a 1975 fall at work, exposure to cigarette smoke at work and going from hot buildings to cold outdoors at work.

In a decision dated August 25, 2000, an Office hearing representative affirmed the earlier decision, which found appellant's claim to be untimely filed. The Office hearing representative stated that he had reviewed appellant's prior claims in case numbers A25-546966, A25-0546997 and A25-77218, but there was no indication in any of those case files, which could be construed as a filing for a laryngeal condition. The Office hearing representative noted that, in his review of case A25-77218, appellant had made numerous mentions pertaining to his chronic throat and

sinus problems but found that appellant never claimed his laryngeal condition was the result of occupational factors of exposure to smoke and heat/cold.

The Board has duly reviewed the case record on appeal and finds that the Office properly denied appellant's claim for an occupational disease as it was not filed within the applicable time limitation provisions of the Act.

In cases of injury on or after September 7, 1974, section 8122(a) of the Federal Employees' Compensation Act states that "an original claim for compensation for disability or death must be filed within three years after the injury or death." Section 8122(b) of the Act 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 the employment and the compensable disability. 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.

Appellant stopped working at the employing establishment on October 2, 1975 and, thus, ceased to be exposed to the implicated employment conditions by that date. Although appellant argued that his laryngeal condition was causally related to his traumatic injuries of August 16, 1973 and/or October 2, 1975, the Office hearing representative indicated that there was nothing in the files of those cases to indicate such a filing or causal connection between appellant's present condition and the traumatic injuries of those cases.

Appellant indicated that he first became aware of a possible connection between his laryngeal problem and his former employment conditions on February 6, 1992 when his physicians so advised him. Under section 8122(b), appellant had three years to file a claim from his February 6, 1992 date of awareness. As appellant filed his occupational claim after February 6, 1995, three years following his date of awareness, his claim of May 20, 1999 is not timely filed under section 8122(b).

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[1] Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.

In the present case, however, the record contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. On the CA-2 form, appellant stated that "supervisor couldn't know whether I had cancer or not." By appellant's own statement, his own supervisor had no actual knowledge of his throat condition. Moreover, the evidence of file is devoid of any indication that appellant's immediate supervisor had actual knowledge or written notice of his injury within 30 days. Thus, appellant has failed to establish that he filed a timely claim on May 20, 1999.

[1] *Id.*

The Board further finds that section 8122(d), which allows the Office to excuse failure to comply with the time limitations provisions for filing a claim for compensation, does not apply in the instant case. Section 8122(d)(1) and (d)(2) tolls the time limitations for a minor or an incompetent individual.[2] The record reflects that appellant was not a minor during his employment as a letter carrier and the record is devoid of any showing that appellant was ever an incompetent individual. Furthermore, appellant has not shown that he is entitled to have the time limitations toll due to "exceptional circumstances" as provided by section 8122(d)(3) of the Act.[3] For instance, an "exceptional circumstance" 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.[4]

The August 25, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 19, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[2] 5 U.S.C. § 8122(d)(1) and (d)(2).

[3] 5 U.S.C. § 8122(d)(3).

[4] *Paul S. Devlin*, 39 ECAB 715, 726 (1988).