

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE O. LUNDSTROM and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 00-455; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant's claim for a hearing loss is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.¹

On October 2, 1998 appellant, then a retired 82-year-old mechanical engineer and naval architect, filed a claim for a loss of hearing that he attributed to noise during his federal employment. Appellant worked at the employing establishment as a mechanical engineer and naval architect from August 1939 to September 1946.

On his claim form, appellant answered that he was unsure of the date that he first realized his condition was caused or aggravated by his employment. Appellant alleged that he did not file the claim in a timely manner because he was not aware until 1998 that it was possible to file such a claim. In support of his claim, appellant submitted various medical records and audiometric evaluation results.

By letter dated May 25, 1999, the Office of Workers' Compensation Programs requested that the employing establishment submit comments from appellant's supervisor, along with information pertaining to his employment, exposure to noise during employment, ear protection provided to appellant, his employment records and any medical records pertaining to appellant's hearing or ear problems.

In response, the employing establishment advised that a statement from appellant's supervisor was not available, that he was separated on February 16, 1945 and that medical records could not be located. The employing establishment submitted job descriptions for a mechanical engineer and a naval architect and provided specific information regarding noise exposure.

¹ 5 U.S.C. §§ 8101-8193.

Following an August 24, 1999 inquiry from the Office regarding when he first became aware of his hearing loss and its relation to his employment, appellant stated that he did not report the injury to anyone. Appellant also stated that he had been treated for hearing loss since 1973 and that in 1998 he was informed by a hearing specialist that working around loud noise probably contributed to his hearing loss.

By decision dated September 14, 1999, the Office denied appellant's claim on the grounds that his claim was not timely filed in accordance with the Act. The Office stated that written notice of a claim for compensation was given on October 2, 1998, 53 years after appellant stopped working at the employing establishment. The Office added that appellant had been treated for hearing loss since 1973 and, therefore, should have been aware of a relationship between his employment and the claimed condition.

The Board finds that appellant's claim was untimely filed under the applicable time limitation provision 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 that adversely affected his hearing.² In this case, appellant left the employing establishment in September 1946. However, he continued to work as a mechanical engineer until 1970, approximately 90 percent of the time with several federal agencies. Appellant stated that most of his work was in an office setting, but he did occasionally go out to shipyards, where he was "exposed to periodic excess noise." Inasmuch as the record indicates that appellant was exposed to work-related noise at least until 1970, the Board finds that year to be the date of injury.³

The Act requires that in cases of injury prior to September 7, 1974 a claim for compensation must be filed within one year of the date that the claimant was aware or reasonably should have been aware that the condition may have been caused by the employment factors. The one-year filing requirement may be waived if the claim is filed within five years and: (1) it is found that such failure was due to circumstances beyond the control of the person claiming benefits; or (2) that such person has shown sufficient cause or reason in explanation thereof and material prejudice to the interest of the United States has not resulted from such failure.⁴ The test for whether sufficient cause or reason was shown to justify waiver of the one-year time limitation is whether a claimant prosecuted the claim with that degree of diligence which an ordinarily prudent person would have exercised in protecting his right under the same or similar circumstances.⁵

Appellant filed a claim for his loss of hearing on October 2, 1998. In an August 1999 statement, appellant asserted that, while he had been treated for hearing loss since 1973, that he

² *Solomon R. Stone*, 32 ECAB 150, 151 (1980).

³ Appellant stated that he retired in 1982.

⁴ *Albert K. Tsutsui*, 44 ECAB 1004, 1007 (1993).

⁵ *Id.*

was informed only in 1998, when tested for hearing loss, that working around loud noise contributed to his hearing loss.

The Board finds that appellant by the exercise of reasonable diligence should have been aware of his hearing loss and its relationship to work within five years of 1970, when he was last exposed to work-related noise. By his own admission, appellant had been treated for hearing loss since 1973, yet did not report any injury to his supervisor after leaving federal employment. The job descriptions of naval architect and mechanical engineer, submitted by the employing establishment, state that appellant's work duties required exposure to "potentially harmful" factors such as noise.

In view of these factors, appellant's argument that he realized only in 1998 that his hearing loss was caused by exposure to noise at work is not persuasive. Inasmuch as appellant failed to file a claim within five years of 1970, the date of his last exposure to work-related noise, the Board finds this 1998 claim for hearing loss is time barred.

The decision of the Office of Workers' Compensation Programs dated September 14, 1999 is hereby affirmed.

Dated, Washington, DC
March 21, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member