

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHARLES D. THOMPSON and DEPARTMENT OF JUSTICE,  
DRUG ENFORCEMENT AGENCY, Washington, DC

*Docket No. 00-2299; Oral Argument Held September 20, 2001;  
Issued October 29, 2001*

Appearances: *Charles D. Thompson*, pro se; *Julia Mankata, Esq.*,  
for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,  
A. PETER KANJORSKI

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

On November 19, 1999 appellant, then a 56-year-old compensationner,<sup>1</sup> filed an occupational disease claim alleging that factors of employment caused bilateral plantar fasciitis and other foot problems. He stated that he became aware of the condition on January 1, 1972 and first realized it was employment related on March 16, 1976. The employing establishment advised that appellant was separated from employment in 1972 and that the employing establishment records contained no reference to a foot injury. In support of his claim, appellant submitted medical evidence regarding his foot condition.

By decision dated April 7, 2000, the Office denied the claim on the grounds that it had not been filed within the applicable time limitation provisions of the Act. Appellant requested a review of the written record<sup>2</sup> and, in a decision dated June 26 and finalized June 27, 2000, an Office hearing representative affirmed the prior decision. The instant appeal follows.

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<sup>1</sup> Appellant receives compensation benefits under the Act for an employment-related left arm condition. On May 24, 1983 the Office of Workers' Compensation Programs determined that he had the wage-earning capacity of a personnel worker. This was affirmed by the Board in an October 23, 1983 decision, Docket No. 83-1384. On numerous occasions appellant has sought to modify the wage-earning capacity decision and currently has an appeal of a July 26, 2000 Office decision as well as a February 9, 2000 schedule award before the Board, Docket No. 00-2551. A decision in that case will be issued separately.

<sup>2</sup> Appellant initially requested a hearing but on April 28, 2000 changed his request to a review of the written record.

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.<sup>3</sup>

In cases of injury prior to September 7, 1974, the Act requires that a claim for compensation be filed within one year of the date that the claimant was aware, or reasonably should have been aware, that the disabling condition may have been caused by the factors of his employment. The requirement may be waived if the claim is filed within five years and it is found that such failure was due to circumstances beyond the control of the person claiming benefits or 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.<sup>4</sup>

In this case, appellant stated on his claim form that he realized that his foot condition was employment related on March 16, 1976, and the Board so finds. He was last employed at the employing establishment in 1972. The one-year limitation for filing a claim for compensation, therefore, began to run on the date he realized his foot condition was employment related, March 16, 1976. Since appellant's claim was not filed until November 19, 1999, it was not filed within the one-year period of limitations applicable to this case.<sup>5</sup> Furthermore, as the claim was not filed within five years, the waiver provisions of the pre-1974 Act are not applicable in this case.

The decision of the Office of Workers' Compensation Programs dated June 26, 2000 and finalized June 27, 2000 is hereby affirmed.

Dated, Washington, DC  
October 29, 2001

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> 5 U.S.C. § 8122(c) (1966).

<sup>5</sup> See *Francis B. Burgess*, 32 ECAB 702 (1981); *Wallace A. Vaught*, 30 ECAB 291 (1978).