

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BLEE HATT, SR. and DEPARTMENT OF THE ARMY,
Fort Hood, TX

*Docket No. 00-1524; Submitted on the Record;
Issued September 7, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is 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.

On October 27, 1999 appellant, then a retired mobile equipment metal mechanic leader and former director of logistics, filed a claim for carcinoma of the bladder, which he alleged occurred in the performance of duty due to prolonged lead exposure. Appellant began work at the employing establishment on or about January 1, 1982 and retired effective December 22, 1995.

On the Form CA-2, appellant's representative indicated that appellant was regularly tested for lead exposure until his retirement on December 22, 1995. In the part of the form requesting the nature of disease or illness, appellant's representative indicated that appellant was diagnosed with a malignant bladder carcinoma in March 1999. He also indicated that the staff informed him that environmental exposure was a causative risk factor and lead exposure altered urinary function and long-term exposure to lead could result in an extensive injury. Appellant did not give an actual date for the date he first realized the disease or illness was caused or aggravated by his employment. In the part of the form requesting an explanation for not filing with the employing establishment within 30 days, he stated that the delay was due to the time diagnosis was made and there was no way to determine how long the tumor was present until it became symptomatic.

In a July 7, 1999 report, Dr. Edward B. Tieng, a Board-certified urologist, diagnosed transitional cell carcinoma of the bladder.

By letter dated January 6, 2000, the Office requested that appellant submit additional information, including a request for evidence establishing that his immediate supervisor had knowledge of the injury within 30 days of the date of the injury.

By letter dated January 6, 2000, the Office requested additional information from the employing establishment.

By letter dated January 21, 2000, appellant's representative discussed appellant's exposure to hazardous chemicals from 1981 until his retirement on December 22, 1995. She indicated that she was not aware of the date the disease or condition manifested itself. She asserted that the Office was presented with a review of the laboratory results from January 1982 to September 28, 1995, which dealt with his exposure to lead.

By decision dated February 28, 2000, 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.

The Board finds that the Office improperly determined that appellant's claim for compensation is barred by the three-year time limitation provision of section 8122 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 The Board notes that an employee need only be aware of a possible relationship between his "condition" and his employment to commence the running of the applicable statute of limitations.⁴

In the instant case, the Office found that appellant was aware of a relationship between his employment and the alleged condition by June 10, 1983 and that his last exposure occurred on December 22, 1995 when he retired. However, the record reflects that appellant did not specifically allege a certain date for the date that he first realized that the disease or illness of carcinoma of the bladder was caused or aggravated by his employment. The record also reflects that appellant indicated that he was first diagnosed in March 1999 for a malignant carcinoma of the bladder and that the staff informed him that environmental factors such as lead exposure, altered urinary function. There is no evidence that the carcinoma of the bladder existed prior to that date or that appellant was aware of the carcinoma condition prior to March 1999. Additionally, on the Form CA-2, appellant's representative indicated that there was no way to determine how long the tumor was present until it became symptomatic. The record reflects that the carcinoma was diagnosed in March 1999. The Board notes that the evidence in the record is insufficient to establish that appellant was aware or reasonably should have been aware of his carcinoma of the bladder condition prior to the date he states in his claim, *i.e.*, March 1999.

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

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

⁴ *Edward C. Horner*, 43 ECAB 834, 840 (1992).

Accordingly, since appellant filed the claim on October 27, 1999, he is clearly inside the three-year limitation period and his claim is, therefore, timely.

The decision of the Office of Workers' Compensation Programs dated February 28, 2000 is hereby set aside and the case remanded for further development of the claim.

Dated, Washington, DC
September 7, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member