

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of A.K. WELFORD and DEPARTMENT OF THE ARMY,  
NATIONAL GUARD, Camp Shelby, MS

*Docket No. 03-1562; Submitted on the Record;  
Issued August 19, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant's claim for an occupational disease is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

On August 26, 2002 appellant, then an 80-year-old heavy mobile equipment mechanic leader, filed a notice of occupational disease alleging that he suffered from chronic pulmonary disease as a result of work factors in his federal employment. He stated that he first became aware that his chronic pulmonary disease was caused or aggravated by his employment on March 3, 1986. The record indicates that appellant retired from his federal job on March 3, 1968.

Appellant submitted a June 22, 2001 report of an abdominal echocardiogram and series of x-rays dated January 11 and March 8, 2002, which revealed advanced emphysematous changes in the lung bases and possible atherosclerotic vascular disease (ASCVD). The record contains hospital admission and discharges summaries from Forrest General Hospital dated May 17 to 22, 2001 indicating that appellant was treated for severe chronic pulmonary disease (COPD) and ASCVD. Appellant was also treated by Dr. Gardner L. Fletcher, a Board-certified internist, from June 19, 2001 through August 21, 2002 for COPD. Dr. Fletcher made no mention of appellant's work history or occupational exposure.

In a letter dated October 28, 2002, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim for compensation. Appellant was specifically told that his evidence was insufficient to establish fact of injury since there was no medical report of record attributing his respiratory condition to work factors. The Office informed appellant that he needed to submit medical evidence documenting his treatment since March 3, 1986, the date he first realized his respiratory condition was due to his employment. The Office also requested that appellant submit a detailed explanation of his occupational exposure. On November 18, 2002 the Office received a memorandum wherein appellant listed his various employment exposures to noxious gases, paint fumes and dust, prior

to his retirement from the employing establishment in 1968. He did not submit any additional medical evidence.

In a decision dated April 15, 2003, the Office denied appellant's claim on the grounds that it was not timely filed. The Office noted that appellant was last exposed to work conditions in 1968, that he received medical treatment for the first time and became aware that his respiratory disease was related to his employment on March 3, 1986, but that appellant did not file his claim until August 26, 2002. The Office further noted that there was no evidence to establish that appellant's supervisor had actual knowledge within 30 days of the last exposure.

The Board finds that appellant's compensation claim for occupational disease is barred by the applicable time limitation provisions of the Act.

Under the Act,<sup>1</sup> as amended in 1974, a claimant has three years to file a claim for compensation.<sup>2</sup> Section 8122(a) provides that "an original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>3</sup> In a case of occupational disease, the Board has held that the time for filing a claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between his condition and his employment.<sup>4</sup> When an employee becomes aware or reasonably should have been aware that he has a condition which has been adversely affected by factors of his federal employment, such awareness is competent to start the limitation period even though he does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.<sup>5</sup> A claim would be regarded as timely under section 8122(a)(1) if the immediate supervisor had actual knowledge of the alleged employment-related injury within 30 days.<sup>6</sup> The knowledge must be such as to put the immediate supervisor reasonably on notice of appellant's injury.<sup>7</sup>

In this case, appellant filed a claim for compensation on August 26, 2002 alleging that on March 3, 1986 he became aware that he had developed COPD caused or aggravated by his exposure to dust, paint and toxic gas in his federal employment. In addition, the record establishes that appellant's last exposure to work factors was March 3, 1968, when he retired from his federal employment. Since appellant did not file his claim for occupational disease until August 26, 2002, he is clearly outside the three-year time limitation period, which began to toll on March 3, 1986 when he first became aware that his respiratory disease was causally related or aggravated by his federal employment. The Board further finds that there is no

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<sup>1</sup> 5 U.S.C. § 8122 *et seq.*

<sup>2</sup> *Duet Brinson*, 52 ECAB 168 (2000); *William F. Dotson*, 47 ECAB 253 (1995).

<sup>3</sup> *See* 5 U.S.C. § 8122(a).

<sup>4</sup> *Brinson*, *supra* note 2.

<sup>5</sup> *Id.*; *see also Leo Ferraro*, 47 ECAB 350 (1996).

<sup>6</sup> 5 U.S.C. § 8122(a)(1).

<sup>7</sup> *Larry E. Young*, 52 ECAB 264 (2001).

evidence of record from which to conclude that appellant's supervisor had actual knowledge of his injury within 30 days after the date of appellant's last exposure on March 3, 1968. Thus, appellant's failure to timely file his claim within three years of March 3, 1986 precludes him from seeking compensation.

The decision of the Office of Workers' Compensation Programs dated April 15, 2003 is hereby affirmed.

Dated, Washington, DC  
August 19, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member