

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MARK S. PRIESTLEY and DEPARTMENT OF THE ARMY,  
COMMAND SAFETY OFFICE, Fort Drum, NY

*Docket No. 03-1034; Submitted on the Record;  
Issued September 10, 2003*

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DECISION and ORDER

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

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's claim for compensation is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

On August 6, 2002 appellant, then a former federal employee, filed a claim for occupational disease, alleging that his bilateral carpal tunnel syndrome was causally related to his employment. Appellant stated that he first became aware of his condition and first realized that it was caused by employment on November 28, 1995. The employing establishment noted that appellant was "no longer employed," and did not indicate the date appellant was last exposed to conditions alleged to have caused his injury. In an attached narrative, appellant stated that he had worked since 1979 as a truck driver and warehouseman where he constantly loaded and unloaded trucks and carried various supplies to certain locations around the facility. In support of his claim, he submitted medical evidence regarding his condition and a personal statement regarding his work history and condition. In a report dated August 28, 1995, appellant's treating physician noted that appellant now had a job that did not require heavy lifting or pulling.

By letter dated September 6, 2002, the Office advised appellant to submit additional information regarding his claim.<sup>1</sup> In response, appellant submitted additional medical evidence and answered specific Office questions regarding his work history and condition. In a report dated May 13, 1996, his treating physician noted that appellant still had discomfort in his shoulder, "but he is able to do his job." In a report dated November 7, 1997, Dr. Krawchenko

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<sup>1</sup> The Office also noted that it had reviewed a previous claim, file number 020662357, that had been accepted for left shoulder rotator cuff tendinitis and herniated disc at L5-S1. The instant claim was adjudicated by the Office under file number 022027677. The Office further requested that appellant's treating physician, Dr. John Krawchenko, a Board-certified neurosurgeon, furnish information regarding appellant's condition. The Office also noted in a September 6, 2002 letter that appellant "has been out of work due to disability from a previous shoulder rotator cuff tendinitis and herniated disc at L5-S1 sustained in 1992."

stated that appellant stopped work three weeks earlier due to back and leg pain. In a treatment note dated July 25, 2002, Dr. Peter Van Eenenaam, appellant's treating physician and a Board-certified orthopedic surgeon, stated that appellant's follow-up electromyogram revealed carpal tunnel syndrome in both hands. The doctor opined that it was reasonable to conclude that appellant's carpal tunnel syndrome was caused by his employment by November 28, 1995. The record includes a treatment note dated November 28, 1995 which noted grip strength weakness. In a narrative dated September 23, 2002, appellant related his employment history, but did not indicate his date of last exposure to the factors which caused his condition.

On November 8, 2002 the Office notified appellant that claims for injuries must be filed within three years of the injury. The Office further advised appellant that even if he did not file within 3 years, compensation may still be allowed if notice of injury was given within 30 days after occurrence or if his employing establishment had actual knowledge of the injury within 30 days of the injury. The Office continued that, since appellant stated that he first became aware of his condition in November 1995, his claim of August 6, 2002 was filed more than three years after his date of awareness. Appellant was therefore requested to submit evidence that his employer knew that his carpal tunnel syndrome was work related, and to submit all medical records from 1995 pertaining to his condition. In response, appellant submitted additional medical evidence.

By decision dated January 27, 2003, the Office denied appellant's claim on the grounds that it was not timely filed.

The Board finds that the case is not in posture for decision.

Section 8122(a) of the Act states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>2</sup> Section 8122(b) 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.<sup>3</sup>

In this case, appellant alleged that his carpal tunnel syndrome was caused by his employment and that he was first aware of the causal relationship between his condition and his work on November 28, 1995. However, the record in this case reveals an initial diagnosis of carpal tunnel syndrome in July 2002.

Where an injury is sustained over a period of time, as in this case, the date of injury is the date of last exposure to the employment factors causing the injury.<sup>4</sup> If a claimant is aware of the causal relation, or by the exercise of reasonable diligence, should have been aware of a causal relation, the time limitations begin to run on the date of his last exposure.<sup>5</sup> The record is not

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<sup>2</sup> 5 U.S.C. § 8122(a); *see Delmont L. Thompson*, 51 ECAB 155 (1999).

<sup>3</sup> 5 U.S.C. § 8122(b); *see Paul Fierstein*, 51 ECAB 381 (2000).

<sup>4</sup> *Sherron A. Roberts*, 47 ECAB 617 (1996).

<sup>5</sup> *Marion H. Salerni*, 24 ECAB 300 (1973); *George O. Bishop, Jr.*, 24 ECAB 60 (1972); *Alfred C. Green*, 23 ECAB 135 (1972).

clear when appellant was last exposed to the conditions alleged to have caused his carpal tunnel syndrome. Although the record includes references to appellant's work, they are not clear as to when appellant was last exposed to those factors alleged to have caused his condition. As the record presently before the Board is devoid of any information concerning the date of appellant's last exposure, the Board will remand the case for development of this issue. Although there is no evidence establishing that there was exposure within the three years immediately prior to filing the claim, the Office must develop and make such finding.

On remand the Office should determine appellant's date of last exposure with respect to the employment factors alleged to have caused his condition. After such further development as the Office deems necessary, it should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated January 27, 2003 is set aside and the case is remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
September 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member