



motion at work prior to her retirement in 1996. Appellant noted that she first became aware of her conditions and their relationship to work factors on October 18, 1991. The Office assigned the Claim No. 03-2007806. The record demonstrates that appellant filed an October 28, 1992 claim for bilateral carpal tunnel syndrome, pain in the neck, both shoulders and left elbow beginning on October 18, 1991. This claim was accepted for bilateral carpal tunnel syndrome under Claim No. 03-0179773 and is not before the Board on the present appeal.<sup>1</sup>

In support of her claim, appellant submitted medical reports dating from 1992 which diagnosed several upper extremity conditions. In a December 13, 2001 letter, Dr. Scott M. Fried, an attending osteopath, opined that appellant developed occupationally-related bilateral brachial plexopathy and “multi-level nerve disease” of the upper extremities as of November 1992.<sup>2</sup>

By decision dated May 2, 2002, the Office denied appellant’s claim on the grounds that it was not timely filed within the applicable three-year time limitation and there was no evidence that her immediate superior had actual knowledge of the injury within 30 days. The Office stated that appellant was aware of a relationship between her employment and the claimed conditions since October 18, 1991; however, she did not file her claim until February 13, 2002, well beyond the three-year time limitation that began to run as of her last exposure to the alleged work factors in 1996. The Office noted that appellant could pursue the matter under Claim No. 03-0179773.

In a May 6, 2002 letter, appellant requested a hearing which was held on December 10, 2002. At the hearing, appellant asserted that, as the Office paid for medical treatment of the bilateral ulnar nerve and brachial plexus conditions she claimed on February 13, 2002, the Office should have accepted those conditions under Claim No. 03-0179773.<sup>3</sup> After the hearing, appellant submitted a December 17, 2002 letter summarizing her treatment for upper extremity and neck conditions beginning in 1992, and copies of documents related to Claim No. 03-0179773.

By decision dated and finalized March 11, 2003, an Office hearing representative affirmed the May 2, 2002 decision.

Appellant requested reconsideration by letter dated March 20, 2003. She alleged that her claim was delayed by exceptional circumstances, including ineffective assistance of counsel and an inability to obtain certain medical reports until after December 17, 2001. Appellant contended that she was a “prisoner of war” in a dispute between one of her attorneys and the Office.

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<sup>1</sup> In a January 2, 2002 letter, appellant requested that the Office accept bilateral ulnar nerve and brachial plexus conditions as occupationally related under Claim No. 03-179773. The Office responded by February 21, 2002 letter advising her to file a new occupational disease claim for the neurologic conditions.

<sup>2</sup> The record indicates that this medical evidence was considered by the Office in developing Claim No. 03-0179773.

<sup>3</sup> The fact that the Office may have paid expenses related to some medical treatment does not establish that the condition for which appellant received treatment was employment related. *Louis G. Psyrras*, 39 ECAB 264 (1987); *Glen E. Shriner*, 53 ECAB \_\_\_ (Docket No. 00-816, issued October 12, 2001).

By decision dated April 18, 2003, the Office denied modification of the March 11, 2003 decision on the grounds that the evidence submitted was insufficient to warrant modification.<sup>4</sup> The Office found that appellant had not established any exceptional circumstance that would remove the bar of the three-year time limitation.

### **LEGAL PRECEDENT**

Section 8122(a) of the Act states that an “original claim for compensation for disability or death must be filed within three years after the injury or death.”<sup>5</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.

Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of the federal employment awareness, the time limitation begins to run on the date of the last exposure to the implicated factors.<sup>6</sup>

### **ANALYSIS**

On her February 13, 2002 claim form, appellant indicated that she first realized on October 18, 1991 that the claimed brachial plexopathy, ulnar and radial neuropathies, neck and jaw pain and a hearing “problem” were caused or aggravated by her postal employment. Appellant retired from the employing establishment on an unspecified date in 1996. She therefore did not file her claim within three years of her last exposure in 1996.

Appellant’s claim would still be regarded as timely under 5 U.S.C. § 8122 if her immediate supervisor had actual knowledge of the injury within 30 days. This provision removes the bar of the three-year time limitation if met.<sup>7</sup> In this case, this provision would mean that the claim would be regarded as timely if the immediate superior knew of the injury within 30 days of appellant’s last exposure to the implicated employment factors in 1996. The provision further provides that knowledge of the injury must be such as to put the immediate supervisor reasonably on notice of appellant’s injury.<sup>8</sup>

The Board finds that there is no evidence of record from which to conclude that appellant’s supervisor had actual knowledge of the claimed conditions within 30 days after

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<sup>4</sup> The Board notes that the April 18, 2003 decision denied both reconsideration and modification, confusing the terminology of a merit and nonmerit review. As the Office performed a detailed review of the evidence submitted on reconsideration and found it insufficient to warrant modification, the Board finds that the April 18, 2003 decision constitutes a merit decision of the Office.

<sup>5</sup> 5 U.S.C. § 8122(a).

<sup>6</sup> *Larry E. Young*, 52 ECAB 264 (2001).

<sup>7</sup> *Hugh Massengill*, 43 ECAB 475 (1992).

<sup>8</sup> *Larry E. Young*, *supra* note 6.

appellant's last exposure to the implicated factors in 1996. Appellant's February 13, 2002 claim form does not provide a date of supervisory notice as it was not signed by any employing establishment official. The only relevant supervisory statement of record is the claim form under Claim No. 03-0179773, signed by appellant's supervisor on November 2, 1992. However, this form does not mention the plexopathy and neuropathies first claimed on February 13, 2002 and thus cannot provide actual notice of these conditions.<sup>9</sup> There is no evidence that appellant's supervisor had actual knowledge of the claimed bilateral brachial plexopathy, ulnar and radial neuropathy within 30 days of appellant's last exposure to work factors in 1996.

Appellant alleged that her failure to file a timely claim should be excused due to exceptional circumstances. Section 8122(d)(3) of the Act<sup>10</sup> provides that time limitations for filing a claim "do not run against any individual whose failure to comply is excused by the Secretary, on the ground that such notice could not be given because of exceptional circumstances." Appellant's excuses for not filing a timely claim were that she had ineffective, contentious attorneys and could not obtain necessary medical reports. However, the Board has held that unawareness of possible entitlement,<sup>11</sup> lack of access to information<sup>12</sup> and ignorance of the law or of one's obligations under it<sup>13</sup> do not constitute exceptional circumstances that could excuse a failure to file a timely claim.<sup>14</sup> Appellant has not established that she could not file a timely claim due to exceptional circumstances, as that term is used in section 8122(d)(3) of the Act. Thus, appellant's failure to timely file her claim within three years of her retirement precludes her from seeking compensation.

### CONCLUSION

The Board finds that appellant did not timely file her February 13, 2002 claim under the three-year time limitation of section 8122 of the Act, as she has not demonstrated that her immediate superior had actual knowledge of the claimed conditions within 30 days of her retirement in 1996, or that she could not file a timely claim due to exceptional circumstances as the term is used under section 8122(d)(3).

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<sup>9</sup> The Board notes that the February 13, 2002 claim for neck, shoulder, wrist and jaw pain and a hearing problem is duplicative as appellant also claimed these conditions under Claim No. 03-0179773.

<sup>10</sup> 5 U.S.C. § 8122(d)(3).

<sup>11</sup> *Roger W. Robinson*, 54 ECAB \_\_\_\_ (Docket No. 03-348, issued September 30, 2003).

<sup>12</sup> *Kathryn L. Cornett (Elmer Cornett)*, 54 ECAB \_\_\_\_ (Docket No. 03-989, issued September 23, 2003).

<sup>13</sup> *George M. Dickerson*, 34 ECAB 135 (1982).

<sup>14</sup> *Michael Thomas Plante*, 44 ECAB 510 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 18 and March 11, 2003 are affirmed.

Issued: March 15, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member