

In a supplemental statement submitted with the claim, appellant asserted that when he was employed in 1980 his hearing was normal however when tested in 1995, he was informed that he had sustained hearing loss. In an attachment to the claim, appellant indicated that he did not file written notice of the claim with the employing establishment within 30 days because he was informed that his type of claim would be frowned upon and might be used to terminate him. Appellant asserted that the reason he filed the claim now was because he felt he should not have to pay for hearing aids which he required after retirement.

In a letter dated December 10, 2002, the Office requested additional information from appellant within 30 days including the date which he first related his hearing loss to work exposure and explanation as to how he realized his hearing loss was work related. In a letter received on January 3, 2003, appellant indicated he had already submitted the requested information.

By decision dated January 31, 2003, the Office denied the claim finding that it did not meet the guidelines for timeliness as required by the Act.¹

On March 3, 2003 appellant requested an oral hearing, which was held on August 14, 2003. Appellant testified that he did not make a claim but that everyone knew about his hearing loss. He further testified that when he mentioned filing a claim it was discouraged and because he was aware that another employee had been “hassled” after filing a claim for hearing loss he saw how it could cause him problems. Appellant maintained during the hearing that he had told someone in a supervisory capacity about his work-related hearing loss although he had not submitted notice in writing.

Following the hearing appellant submitted his audiogram history data sheet from the employing establishment including a reference audiogram dated November 9, 1995 which was reportedly conducted following exposure in noise duties. Appellant also submitted a February 13, 2003 report from Lawrence Barnum, the base audiologist who interpreted the audiogram data. In his report, Mr. Barnum concluded that from 1983 to 1995 appellant’s hearing levels had changed drastically in both ears. He noted that appellant was monitored for two years while he was in a hearing conservation program for working in hazardous noise and that additional hearing loss was also found from 1995 to 1997. Mr. Barnum concluded that, while appellant did have a noise-related hearing loss, he found it difficult to contribute such loss to his employment.

By decision dated October 31, 2003, an Office hearing representative affirmed the prior decision finding that appellant did not file a claim for a work-related hearing loss within the three-year limitation.

LEGAL PRECEDENT

Under the Act, as amended in 1974, a claimant has three years to file a claim for compensation.² Section 8122(a) provides that “an original claim for compensation for disability

¹ 5 U.S.C. §§ 8101-8193.

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

or death must be filed within three years after the injury or death.”³ 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.⁴ 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.⁵ 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.⁶ Also, 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.⁷ The knowledge must be such as to put the immediate supervisor reasonably on notice of appellant’s injury.⁸

ANALYSIS

In this case, appellant filed a claim for compensation on August 29, 2002 alleging that in 1995 he became aware that he had sustained hearing loss by his exposure to noise in the computer mainframe in his federal employment. In a supplemental statement of record, appellant indicated that he had not reported the claim sooner because he was advised that his type of claim would be frowned upon and could be used to terminate his employment. During his oral hearing, appellant testified that, while he did not file a claim during his federal employment, everyone knew about his hearing loss and he knew that filing a claim was discouraged. The record establishes that appellant’s last exposure to work factors was January 3, 1998, when he retired from his federal employment. Since appellant did not file his claim for occupational disease until August 29, 2002, he is clearly outside the three-year time limitation period, which began to run on the date of last exposure or January 3, 1998, when he retired. The Board further finds that while appellant testified at the hearing that he informed someone in a supervisory capacity of his alleged work-related hearing loss, there is no evidence of record from which to conclude that appellant’s supervisor had actual knowledge of his claimed employment injury within 30 days after the date of appellant’s last exposure on January 3, 1998. Thus, appellant’s failure to timely file his claim within three years of January 3, 1998 precludes him from seeking compensation.

³ See 5 U.S.C. § 8122(a).

⁴ *Brinson*, *supra* note 2.

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

⁶ See *Garyleane A. Williams*, 44 ECAB 441 (1993); *Charlene B. Fenton*, 36 ECAB 151 (1984).

⁷ 5 U.S.C. § 8122(a)(1).

⁸ *Larry E. Young*, 52 ECAB 264 (2001).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated October 31 and January 31, 2003 are affirmed.

Issued: May 24, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member