



## **FACTUAL HISTORY**

On June 3, 2002 appellant, then a 62-year-old former laundry worker foreman, filed an occupational disease claim for an unspecified medical condition. She alleged that she was exposed to asbestos and chemicals used for dry cleaning and laundry purposes. Appellant identified the year 1975 as when she first became aware of her illness. She further stated that it was not until 1995 when she was “diagnosed” that she first realized the employment-related nature of her condition. Appellant, however, did not identify a specific diagnosis. The employing establishment advised that appellant resigned effective November 20, 1987 because of “personal illness.”

The medical evidence submitted with the claim pertained to appellant’s 1981 treatment for hypertension and surgery for an exploratory laparotomy, cholecystectomy and incidental appendectomy.

By decision dated October 31, 2003, the Office denied appellant’s claim as it was not filed within the requisite timeframe. The Office noted that she realized her condition was related to her former employment in 1995 and she waited approximately seven years thereafter before filing her claim. The Office found that appellant exceeded the maximum filing time by about four years.

By letter postmarked December 8, 2003, appellant requested an oral hearing. The Office denied appellant’s request in a decision dated January 14, 2004. The Office found that appellant’s hearing request was untimely.

## **LEGAL PRECEDENT -- ISSUE 1**

Section 8122(a) of the Federal Employees’ Compensation Act states in relevant part: “An original claim for compensation for disability or death must be filed within three years after the injury or death.”<sup>2</sup> However, in a case of latent disability, the time limitation does not begin to run “until the employee is aware or by the exercise of reasonable diligence, should have been aware, of the causal relationship of the compensable disability to his employment.”<sup>3</sup> 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.<sup>4</sup>

## **ANALYSIS -- ISSUE 1**

Appellant ceased working November 20, 1987. In her June 3, 2002 occupational disease claim, appellant stated that she first realized her illness was caused or aggravated by her employment in 1995. While she was reportedly “diagnosed in 1995,” she did not specify the nature of her diagnosis. The claim form also indicated that appellant was delayed in filing her

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<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(b).

<sup>4</sup> *Debra Young Bruce*, 52 ECAB 315, 317 (2001).

claim due to illness. But the only medical evidence submitted with the claim dated back to 1981 when appellant underwent gastrointestinal surgery and was treated for hypertension. She did not provide any specific information regarding the circumstances that allegedly precluded her from timely filing her claim after she became aware of her employment-related condition in 1995.

Appellant claimed to have been aware of the employment-related nature of her condition in 1995; however, she did not file her occupational disease claim within three years of the date she became aware of her employment-related condition. Instead, she waited more than six years before filing her claim in 2002. Appellant's statement that she was aware of the employment-related nature of her condition in 1995 is sufficient to commence the three-year time limitation under section 8122 of the Act.<sup>5</sup> Her unsubstantiated claim that illness precluded her from filing her claim in a timely fashion is insufficient to suspend the filing requirements under section 8122.<sup>6</sup> As appellant filed her June 3, 2002 claim more than three years after she became aware of the employment-related nature of her condition, the Office properly denied her claim as untimely.

### **LEGAL PRECEDENT -- ISSUE 2**

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>7</sup> However, the Office has discretion to grant or deny a request that was made after this 30-day period.<sup>8</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

Appellant's request for an oral hearing was postmarked December 8, 2003, which is more than 30 days after the Office's October 31, 2003 decision. As such, appellant is not entitled to a hearing as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant of the opportunity to request reconsideration.<sup>10</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's December 8, 2003 request for a hearing.

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<sup>5</sup> *Larry E. Young*, 52 ECAB 264, 266 (2001).

<sup>6</sup> 5 U.S.C. § 8122(d).

<sup>7</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>8</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>9</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>10</sup> *E.g., Jeff Micono*, 39 ECAB 617 (1988).

**CONCLUSION**

The Board finds that the Office properly denied appellant's claim as untimely filed. The Board further finds that the Office properly denied appellant's December 8, 2003 request for a hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2004 and October 31, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 24, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member