

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**LUCILLE R. STEWARD, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Bonita, CA, Employer**

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**Docket No. 05-1945  
Issued: December 6, 2005**

*Appearances:*  
*Lucille R. Steward, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On September 19, 2005 appellant filed a timely appeal of the decisions of the Office of Workers' Compensation Programs dated February 25 and July 18, 2005 which denied her claim as not timely filed.<sup>1</sup> Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether the Office properly denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

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<sup>1</sup> The Board notes that the Office denied appellant's claim on February 25, 2005 on the grounds that she had not established that her carpal tunnel syndrome was causally related to factors of her federal employment. Following a merit review, the Office issued the July 18, 2005 decision modifying the February 25, 2005 decision to reflect that appellant's claim for carpal tunnel syndrome was untimely filed.

## **FACTUAL HISTORY**

On November 27, 2004 appellant, then a 56-year-old distribution clerk, filed an occupational disease claim alleging that she sustained carpal tunnel syndrome due to her federal employment. She indicated that she had worked as a distribution clerk for 29 years and did repetitive sorting of letter mail, flats and parcels. Appellant also indicated that she cased mail and typed on the computer. She listed the date that she first became aware of the disease and the date that she was aware that the disease was causally related to her federal employment as December 20, 2001. Appellant indicated that the claim was not filed within 30 days because she “thought it would go away.” The employing establishment controverted the claim as not timely filed. The employing establishment noted that appellant retired on October 22, 2001 and that the date she first reported her condition to her supervisor was December 6, 2004.

By letter dated December 23, 2004, the Office requested that appellant submit further information. On January 11, 2005 appellant indicated that she did not file her claim earlier because she had retired and just discovered that she could file a claim even though she was unemployed.

By decision dated February 25, 2005, the Office denied appellant’s claim finding that the claimed condition was not causally related to factors of her employment.

On May 9, 2005 appellant requested reconsideration.

In a medical report dated December 14, 2004, Dr. Peter Low, Board-certified in occupational medicine, indicated that appellant told him that she began experiencing numbness and pain in both hands and pain in her wrists in 1997. He noted that she attributes her symptoms to repetitively handling mail at work and repetitive computer keyboarding.

On June 1, 2005 the Office held a telephone conference with appellant, who acknowledged that in 1997 she was told that she had carpal tunnel syndrome and that she would eventually require surgery for this condition. She assumed at that time that it was due to her work duties, and that the physician at the time stated that her condition was probably related to work. Appellant stated that she told her supervisor, Alfaye Massaro, that she had carpal tunnel syndrome and that it was probably related to her employment, but that she could not remember the exact date of this conversation.

In a statement dated June 21, 2005, Ms. Massaro indicated that from December 2000 to June 2003 she was on a detail and was not working with appellant. Therefore, it would have been impossible for appellant to inform her on or about October 22, 2001 of any injury. She indicated that the first time she became aware that appellant had a problem with her hands was when she received the claim form in December 2004.

By decision dated July 18, 2005, the Office reconsidered appellant’s claim, but modified its February 25, 2005 decision to reflect that the claim was not timely filed and affirmed the February 25, 2005 decision as modified.

## LEGAL PRECEDENT

Section 8122(a) of the Federal Employees' Compensation Act<sup>2</sup> states that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>3</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>4</sup> 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.<sup>5</sup>

The claim would still be regarded as timely under section 8122(a)(1) of the Act if the immediate supervisor had actual knowledge of the alleged employment-related injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of appellant's injury.<sup>6</sup> An employee must show not only that her immediate superior knew that she was injured, but also knew or reasonably should have known that it was an on-the-job injury.<sup>7</sup> The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.<sup>8</sup>

## ANALYSIS

The evidence of record establishes that appellant did not timely file a claim for compensation under the Act. Appellant filed her claim for benefits on November 27, 2004. Although appellant initially indicated that she first became aware of her carpal tunnel syndrome and its relationship to her employment on December 20, 2001, she later acknowledged that she became aware of her condition and its causal relationship to her employment in 1997. Where the employee continues in employment after she reasonably is aware or should have been aware that she has a condition adversely affected by factors of her federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.<sup>9</sup> As appellant's claim was filed three years and three weeks after she retired on October 22, 2001, the claim was not timely filed. Appellant's claim could still be considered timely under section 8122(a)(1) if her immediate supervisor had actual knowledge of the injury within 30 days. However, appellant's supervisor indicated that she was unaware of appellant's condition until after she filed her claim

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<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 8122(b).

<sup>5</sup> See *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993); *Alicia Kelly*, 53 ECAB 244 (2001).

<sup>6</sup> 5 U.S.C. § 8122(a)(1); see also *Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(a)(3) (March 1993).

<sup>7</sup> *Charlene B. Fenton*, 36 ECAB 151 (1984).

<sup>8</sup> *Debra Young Bruce*, 52 ECAB 315 (2001).

<sup>9</sup> *Alicia Kelly*, *supra* note 5.

on November 27, 2004. She further noted that appellant could not have informed her of her condition within 30 days of December 20, 2001 as she was not working at appellant's place of employment at that time. There is no other evidence of record establishing that appellant served notice of injury and its relationship to her federal employment within 30 days of December 20, 2001. Accordingly, appellant has failed to establish that her claim was timely filed.

**CONCLUSION**

The Board finds that the Office properly denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 18, 2005 is affirmed.

Issued: December 6, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board