



Appellant commented that his claim was not filed within 30 days of that date because he was unaware that loss of hearing fell under the guidelines of workers' compensation. The employing establishment indicated that appellant was last exposed to the high noise levels on March 1, 1996 when he retired. In a March 3, 2005 note, the employing establishment indicated that appellant first reported his condition to his supervisor as of that date.

In a January 25, 2005 letter, an audiologist discussed appellant's hearing loss at work. He indicated that appellant's first audiogram showed that he had a preexisting hearing loss. The audiologist stated that appellant's last test at the employing establishment showed that the only significant change occurred in the lower frequencies, which he commented were least affected by noise exposure. He stated that a comparison of the two audiograms from the 500 Hertz (Hz) and the 3,000 Hz showed that the average level had increased only 1 decibel in the left ear and only 8 decibels in the right ear. The audiologist commented that a substantial portion of the average change in the right ear was due to an unusual increase at 500 Hz. He stated that the 30 decibels threshold at 500 Hz represented an increase of 15 to 20 decibels over all the previous tests which suggested a conductive etiology on the final test. The audiologist indicated that the levels at 4,000 Hz and 6,000 Hz increased only at one frequency by 5 decibels between 1974 and 1992. He noted that such small changes were consistent with test-retest variability or, if valid, could be attributed to aging.

The employing establishment also submitted periodic audiograms taken during appellant's employment, dating from November 11, 1974 to June 3, 1992. In a March 25, 1995 memorandum, an Office medical adviser stated that a comparison of the first and last employment audiograms did not show significant worsening of a preexisting hearing loss.

In a March 30, 2005 letter, the Office indicated to appellant that his claim had not been submitted until eight years after he stopped working at the employing establishment. The Office pointed out that, under the Act, a claim for compensation had to be filed within three years of his retirement unless his immediate supervisor had actual knowledge of his hearing loss within 30 days after he stopped working. It commented that the Office medical adviser had concluded that the audiograms from the employing establishment did not show any worsening of appellant's preexisting hearing loss during the time of his employment, thereby showing that there was no injury to appellant. The Office requested that appellant submit a statement from a former supervisor who was aware of his potential hearing loss by no later than March 31, 1996. The Office also asked for any further medical records from the employing establishment. Appellant was given 30 days to submit the information.

In an April 4, 2005 letter, appellant stated that he was fired from a job with a private employer on July 14, 2004 because he failed a hearing test. He commented that he became aware of the Act only in June 2004. Appellant stated that the private employer would not give him the audiogram of July 14, 2004.

In a May 10, 2005 decision, the Office denied appellant's claim on the grounds that his claim was not timely filed.

## LEGAL PRECEDENT

Section 8122 of the Act<sup>1</sup> states that an original claim for compensation must be filed within three years after the injury for which compensation is claimed.<sup>2</sup> A claim may be allowed notwithstanding the time limitation if the employee's immediate supervisor had actual knowledge of the injury within 30 days of its occurrence, or if written notice of the injury was given within 30 days pursuant to 5 U.S.C. § 8119.<sup>3</sup>

In the case of a latent disability, the time for filing the claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, that his disability is causally related to his employment.<sup>4</sup> In such a case the time for giving notice of injury begins to run when the employee knows, or reasonably should have known, that he has a condition causally related to his employment, whether or not there is a compensable disability.<sup>5</sup> If a claimant is exposed to the injurious conditions after he becomes aware of the relationship between his employment and his injury, time begins to run when the claimant's exposure to the injurious conditions has ceased.

## ANALYSIS

Appellant was last exposed to noise at the employing establishment on March 1, 1996. He did not file a claim for compensation until January 8, 2005, almost nine years after he stopped working at the employing establishment. Appellant stated that he realized his hearing loss was related to his employment on approximately April 30, 1993. Appellant argued that he did not know he could receive compensation for hearing loss until June 2004. However, ignorance of the Act is no excuse and does not affect the time limitations for filing a claim.<sup>6</sup> Therefore, the time limitations would begin to run as of March 1, 1996, the date of appellant's last exposure to noise at the employing establishment. Since appellant did not file a claim for compensation within three years of March 1, 1996, he did not meet the time limitations set forth by the Act.

The Act provides an exception to the three-year time limitation, indicating that a claim will be considered timely if a claimant's immediate supervisor had actual knowledge of the injury within 30 days such that he or she was reasonably put on notice of an on-the-job injury or death. The Board has held that when a claimant seeks treatment from the employing establishment's health unit for a claimed condition, his or her supervisor is deemed to have actual knowledge of the claimed injury as of the date of the treatment.<sup>7</sup> In this case, the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> 5 U.S.C. § 8122(a).

<sup>3</sup> 5 U.S.C. § 8122(a)(1)-(2).

<sup>4</sup> 5 U.S.C. § 8122(b).

<sup>5</sup> *Id.*

<sup>6</sup> *Robert E. Kimzey*, 40 ECAB 762, 766 (1989).

<sup>7</sup> *Delmont Thompson*, 51 ECAB 155, 156 (1999).

employing establishment submitted appellant's audiograms for an 18-year period. The audiograms would place appellant's supervisor on notice if they showed that appellant had deterioration in his hearing while he worked at the employing establishment. The Office medical adviser, however, reviewed the audiograms and concluded that a comparison of the earliest and most recent audiograms conducted at the employing establishment did not show a significant worsening of appellant's preexisting hearing loss. Appellant therefore failed to show that he had sustained an employment-related injury while working at the employing establishment. As the audiograms did not show an injury, appellant's immediate supervisor was not on notice that appellant had sustained an injury related to work. As a result, the exception to the time limitation provisions of the Act does not apply in the present case.

**CONCLUSION**

Appellant's claim for an employment-related hearing loss was not filed within the three-year time limitation provisions of the Act.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 10, 2005 is hereby affirmed.

Issued: November 14, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge  
Employees' Compensation Appeals Board