

remove the contents from the suspect's pockets on that date, he sustained a full needle stick in his left ring finger, through his protective gloves, from an uncapped syringe containing a small amount of what was believed to be heroin. Appellant did not report the incident because he "did n[o]t think it was a big deal and felt as though [he] was n[o]t injured." He claimed that on April 28, 2004 he was diagnosed with Kaposi's sarcoma, a rare cancer associated with HIV infection. A May 13, 2004 blood test confirmed that he was HIV positive and had been so for six to eight years. Appellant alleged that he was not trained in HIV awareness or transmission methods and was unaware that there was a substantial health risk due to the 1998 needle stick. Noting that he knew of no other possible cause for his condition, appellant attributed his HIV status to the March 1998 needle stick.

In the June 23, 2004 supervisor's response to the traumatic injury claim, John M. Miller controverted appellant's allegation that he was not trained in HIV awareness or transmission methods and that he was unaware that there was a substantial health risk at the time of the alleged injury. According to appellant's officer corps rating system, he received two hours of hepatitis B/HIV training on July 11, 1994, while employed as a police officer and one hour of blood pathogen training on February 5, 1997, while employed by the U.S. Border Patrol.

Appellant submitted a May 21, 2004 letter from Dr. Raymond A. Geyer, a Board-certified osteopath specializing in infectious diseases, who examined him on May 18, 2004. He stated that appellant was in an untreated state regarding his HIV infection. Dr. Geyer indicated that appellant could not identify any significant lifestyle or behavioral risk factors for acquisition of HIV disease and that the most pertinent risk event for acquiring HIV appeared to be a needle puncture injury that occurred as part of his work duty with the Border Patrol in the San Diego area in 1998. Dr. Geyer stated that the 1998 needle stick injury caused appellant's HIV infection.

By letter dated July 7, 2004, the Office informed appellant that the evidence submitted was insufficient to establish that he provided timely notification of his work injury. The Office asked him to provide additional information within 30 days in support of his claim. Appellant submitted a narrative statement dated July 26, 2004, indicating that he did not report his 1998 injury immediately because he did not believe that he was injured at the time and therefore did not believe it was necessary to file a report. Only after he was diagnosed with HIV in May 2004, did he realize the extent of his injury.

By decision dated August 10, 2004, the Office denied appellant's claim on the grounds that it was barred by the applicable time limitation provisions of the Act. Noting that appellant had received on-the-job training regarding HIV/blood-contracted diseases, the Office found that he should reasonably have known of the potential risk factors associated with a needle stick and should have been aware of the relationship between his employment and his claimed condition on the date of injury. The Office further found that appellant's immediate supervisor did not have actual knowledge of the injury within 30 days.

On August 30, 2004 appellant requested a hearing and submitted a July 13, 2004 letter from Dr. Geyer. He stated that appellant's diagnosis of Kaposi's sarcoma on May 18, 2004 had triggered testing for the HIV antibody, which revealed that appellant had been infected with the HIV virus for no less than 5 years and no longer than 10 years. Dr. Geyer stated that appellant

had no history of blood transfusion, sexual encounters with another male and no history of intravenous drug use. Although appellant did receive some tattoo artistry several years prior to the 1998 injury, he was known to have negative HIV testing in 1998. Dr. Geyer related the history of the alleged 1998 injury, indicating that, while detaining an illegal alien, appellant sustained a needle puncture in the tip of the fourth finger of his left hand that was deep enough into the pulp of the finger tip that he had to manually force the needle out of his finger. He stated that he was “certain” that appellant’s HIV infection resulted from the 1998 needle puncture. Dr. Geyer also noted that the particular virus with which appellant was infected was typical of viruses transmitted in third world countries.

At the June 21, 2005 hearing, appellant’s representative stated that, at the time of the 1998 injury, appellant was not overly concerned since the injury was minor and he did not become aware of his HIV condition until April 2004. He noted that, appellant had received blood pathology training prior to his HIV exposure. He indicated that although there was no written evidence to support that appellant’s immediate supervisor was notified of the 1998 injury, appellant had mentioned the incident to his supervisor during a casual conversation some time after the injury. The hearing representative asked if appellant would be able to locate the supervisor to whom he reported the 1998 finger stick incident. Appellant replied that he would be able to find him. Appellant’s representative noted that appellant did not directly report the incident to his supervisor, indicating that “it was a statement in passing, a casual conversation.” The hearing representative kept the record open for 30 days for the submission of additional evidence.

By letter dated July 14, 2005, appellant’s representative notified the hearing representative that he had contacted agent Bonifacio Lara, appellant’s supervisor at the time of the 1998 incident. Agent Lara was unable to remember any conversation with appellant regarding the 1998 needle prick incident.

By decision dated August 18, 2005, the Office hearing representative affirmed the August 10, 2004 decision finding that appellant’s claim was not timely filed. The representative found that appellant was immediately aware of his injury, even though he did not develop HIV for several years and that the time for giving notice began to run at the time of the injury. The hearing representative also found that there was insufficient evidence to establish that appellant had given actual notice to his supervisor.

LEGAL PRECEDENT

Section 8122(a) of the Act¹ provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.² In cases involving a traumatic injury, the time limitation commences to run on the date of the incident even though

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8122.

the employee may not be aware of the seriousness or ultimate consequences of the injury or the nature of the injury is not diagnosed until sometime later.³

Even if a claim was not filed within the required three-year period, it would still be regarded as timely under section 8122(a)(1) of the Act if the claimant's immediate superior had actual knowledge of the injury within 30 days,⁴ or under section 8122(a)(2) if written notice of injury was given within 30 days as specified in section 8119.⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁶

ANALYSIS

Appellant claimed that he sustained a needle puncture to his left ring finger in March 1998, in the performance of duty. He filed a claim on June 19, 2004, alleging that he contracted an HIV infection as a result of this injury. The record is clear that appellant did not file his claim within three years of the date of the March 1998 incident. Appellant has argued, however, that because he filed his claim within three years of the date that he became aware of the causal relationship between his employment injury and his HIV infection, his claim was timely filed. The Board finds that the Office properly denied appellant's claim as untimely filed.

Claiming that he was untrained in HIV awareness or transmission methods, appellant stated that he did not report the needle incident because he "did n[o]t think it was a big deal" and was unaware that there was a substantial health risk as a result of the injury. However, the evidence of record contradicts appellant's allegations. Mr. Miller, appellant's supervisor, stated that appellant received two hours of hepatitis B/HIV training on July 11, 1994 while employed as a police officer and one hour of blood pathogen training on February 5, 1997 while employed by the U.S. Border Patrol. Appellant also admitted at the June 21, 2005 hearing that he had received blood pathology training prior to the March 1998 incident. It is reasonable to assume that, based upon his training and experience as a border patrol agent, he was aware of the risks involved when he sustained a needle puncture that was, according to Dr. Geyer, deep enough into the pulp of the finger tip that he had to manually force the needle out of his finger. The fact that appellant was wearing protective gloves at the time the needle stick occurred indicates that he was aware of such risks. Appellant's assertions that "he felt as though [he] was n[o]t injured" at the time of the 1998 needle puncture are not persuasive.

Appellant contends that his condition is a latent disability and that he first realized that it was related to his employment when he was diagnosed with HIV in 2004. Section 8122(b) provides that in latent disability cases, the time limitation begins to run when the claimant is aware or by the exercise of reasonable diligence should have been aware, of the causal relationship between his employment and the compensable disability.⁷ In an occupational injury

³ See *Paul S. Devlin*, 39 ECAB 715 (1988); *Kenneth W. Beard*, 32 ECAB 210 (1980).

⁴ 5 U.S.C. § 8122(a)(1); see *Larry Young*, 52 ECAB 284 (2001); see also *Jose Salaz*, 41 ECAB 743, 746 (1990).

⁵ 5 U.S.C. §§ 8119, 8122(a)(2).

⁶ 5 U.S.C. § 8122(a)(1); see *Jose Salaz*, *supra* note 4 at 746.

⁷ *Supra* note 2.

case, a claimant may be unaware of the development of a latent disability, which progresses over a long period of time. However, this is a traumatic injury claim, as appellant experienced a single, identifiable incident, namely, a finger puncture from an uncapped syringe that was believed to contain heroin, on a single workday in March 1998. Appellant acknowledged that he was aware that the incident occurred. He contends that he was unaware of the consequences of the injury. The Board has held that in cases involving a traumatic incident of which the employee is immediately aware, the time for filing a claim begins to run at the time of the traumatic incident even though all sequelae of injury may not be known until later.⁸ The time for filing the claim for compensation began to run at the time appellant experienced the March 1998 finger puncture, despite the fact that he was not aware of the seriousness of the ultimate consequences of the injury or that the nature of the injury was not diagnosed until May 2004. Appellant's claim was not filed within 3 years of the March 1998 incident.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if written notice of injury was given within 30 days. Appellant has not satisfied either of these provisions. The record reflects that his immediate supervisor at the time of the alleged injury was unable to remember any conversation with appellant regarding the March 1998 needle puncture incident.⁹

For the reasons stated above, the Board finds that the time limitation in appellant's case began to run no later than March 30, 1998. Since appellant's claim was not filed until June 19, 2004, it was not filed within the three-year time limitation provisions of the Act.

CONCLUSION

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

⁸ See *Paul S. Devlin*, *supra* note 3 at 725-26.

⁹ For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury. *David R. Morey*, 55 ECAB _____ (Docket No. 04-967, issued August 16, 2004).

ORDER

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

Issued: July 13, 2006
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