

employment on June 7, 1999. Appellant retired on January 15, 2000 and this was his last exposure to employment factors.

In support of his claim, appellant submitted employing establishment medical records dated August 13 and November 3, 1965, which noted essentially normal physical examinations. An employing establishment memorandum dated November 30, 1998 noted that an echocardiogram and chest x-ray revealed an enlarged heart and possible aortic aneurysm. An echocardiogram dated April 30, 1999 revealed marked concentric left ventricular hypertrophy, left ventricular limitation with normal segmental wall motion, left atrial enlargement and moderately severe aortic insufficiency with mild aortic valve sclerosis. Appellant was seen in consultation with Dr. Marie E. Nguyen, a Board-certified internist, on June 22, 1999. She diagnosed valvular heart disease, manifested by moderately severe aortic regurgitation and mild mitral regurgitation, history of palpitation and gout. A discharge summary from Kaiser Permanente for an admission from June 26 to July 8, 1999 noted that appellant presented with dizziness and dyspnea on exertion. He was diagnosed with aortic insufficiency, coronary artery disease and decreased left ventricular systolic function, hypertension, gout, degenerative joint disease and restrictive lung disease. On June 29, 1999 Dr. Nguyen performed a left heart catheterization and diagnosed 2 to 3 aortic regurgitation and single-vessel coronary artery disease. Chest x-rays dated July 2 to 4, 1999 noted a postoperative pleural effusion and a stable postoperative chest x-ray. An operative report dated July 2, 1999, noted that appellant underwent a aortic valve replacement and a coronary artery bypass and was diagnosed with moderately severe aortic regurgitation, single-vessel coronary artery disease and moderate left ventricular dysfunction.

In a statement dated September 28, 2004, appellant indicated that he started working at the employing establishment on March 23, 1980 and retired on January 15, 2000. He experienced dizziness, fatigue and shortness of breath and underwent diagnostic testing which revealed an enlarged heart and possible aneurysm. Appellant asserted that his enlarged heart and aortic valve replacement were caused by his work duties as a sandblaster and driller. After undergoing surgery in 1999 he returned to light-duty work until his retirement. In a statement dated October 29, 2004, appellant advised that he had to retire early because of his heart condition. He noted that his doctors and supervisors never advised him of his right to file a claim for his heart condition and believed he should have been provided notice of his right to file a claim.

By letter dated November 2, 2004, the Office requested additional information from appellant noting that the evidence submitted was insufficient to establish his claim. Appellant submitted duplicative medical records including a chest x-ray dated November 9, 1998, an employing establishment memorandum dated November 30, 1998 and a report from Dr. Nguyen dated June 22, 1999.

By decision dated February 3, 2005, the Office denied appellant's claim on the grounds that the evidence of record failed to demonstrate that his claim was timely filed in accordance with 5 U.S.C. § 8122. The Office found that appellant first became aware of his condition in 1999 and became aware of the relationship between his employment and the claimed condition on June 7, 1999. Appellant retired on January 15, 2000 and did not file his claim until September 27, 2004, which was over three years after he was last exposed to work factors.

There was no evidence that appellant's supervisor had knowledge of the employment-related injury within 30 days.

In a letter dated November 1, 2005, appellant requested reconsideration and submitted additional evidence. He provided a history of his treatment for his heart condition and subsequent surgery. Appellant had no previous knowledge of a three-year time limitation for filing his compensation claim. He advised that he informed his supervisors during his employment that he was diagnosed with an enlarged heart and underwent various diagnostic tests and surgery. Appellant submitted a statement from Henry Murashige, a shop toll room foreman, dated October 19, 2005. Mr. Murashige advised that he was aware that appellant had a heart condition during his employment and underwent surgery in 1999. He indicated that he discussed appellant's absence with management. Another note from Hiram N. Barboza, a shop tool room mechanic's supervisor and appellant's supervisor from 1998 to 2000, noted that he was aware that appellant was treated for a knee problem and a heart condition. He noted that appellant underwent heart surgery and was incapacitated for two weeks.

By decision dated January 26, 2006, the Office denied modification of the February 3, 2005 decision.

LEGAL PRECEDENT

Section 8122(a) of the Federal Employees' Compensation Act states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death."¹ 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.² 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.³

The claim would still be regarded as timely under section 8122(a)(1) of the Act if the claimant's immediate supervisor had actual knowledge of his 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.⁴ An employee must show not only that his immediate superior knew that he was injured, but also knew or reasonably should have known that it was an on-the-job injury.⁵

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

³ See *Mitchell Murray*, 53 ECAB 601 (2002); *Alicia Kelly*, 53 ECAB 244 (2001); *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁴ 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).

⁵ *Charlene B. Fenton*, 36 ECAB 151 (1984).

ANALYSIS

In its January 26, 2006 decision, the Office denied appellant's claim on the grounds that it was not timely filed in accordance with 5 U.S.C. § 8122.

Appellant indicated that he first became aware of a connection between his heart condition and his employment on June 7, 1999. The record reveals that appellant was last exposed to work factors on January 15, 2000, the day he retired. Therefore, the time limitations began to run on January 15, 2000, appellant's last exposure to the implicated employment factor. Since appellant did not file a claim until September 27, 2004 his claim was filed outside the three-year time limitation period under section 8122(b).

Appellant's claim, however, would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁶ Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.⁷

The record contains no evidence that appellant's supervisor had actual knowledge of the injury or that written notice of the injury was given within 30 days. Appellant submitted a statement from Mr. Murashige, a shop toll room foreman, who advised that he was generally aware that appellant had a heart condition during his employment and underwent surgery in 1999. He discussed appellant's absence with management. Mr. Barboza, a shop tool room mechanic's supervisor who was appellant's supervisor from 1998 to 2000 indicated that during this time appellant was treated for a heart condition and underwent heart surgery. Although Mr. Murashige and Mr. Barboza indicated a general awareness of appellant's heart condition in 1999 and subsequent surgery, they did not state that they had knowledge that this condition was employment related. These statements do not establish that appellant's supervisors were reasonably on notice of a work-related injury.⁸ Knowledge merely of an employee's illness is not sufficient to establish actual knowledge and timeliness, it must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it to his employment.⁹ The Board

⁶ 5 U.S.C. § 8122(a)(1); see *Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

⁷ 5 U.S.C. § 8122(a)(1) and (2).

⁸ See *Linda J. Reeves*, 48 ECAB 373 (1997) (where the Board held that while appellant submitted a statement from a former supervisor that established that he had some knowledge of appellant's complaints, this statement is not sufficient to establish that her immediate superior had actual knowledge of a work-related injury as the statement only makes a vague reference to appellant's health and does not indicate that she sustained any specific employment-related injury, rather the knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death).

⁹ See *id.*; *Roseanne S. Allexenberg*, 47 ECAB 498 (1996) (where the Board held that knowledge of an employee's illness is not sufficient to establish actual knowledge and timeliness of a claim, it must be shown that the circumstances were such as to put the supervisor on notice that the alleged injury was actually related to the employment or that the employee attributed it thereto).

finds that appellant has not established actual knowledge by his supervisors of his work-related condition within 30 days and therefore has not established a timely claim. The record is devoid of any indication that appellant's immediate supervisors had written notice of his work-related injury within 30 days. The exceptions to the statute have not been met, and thus, appellant has failed to establish that he filed a timely claim on September 27, 2004.

Appellant asserted that he was not aware of the three-year period for filing a claim. However, this argument amounts to ignorance of the law which has not been accepted by the Board as "sufficient cause or reason" for failure to file a timely claim.¹⁰

CONCLUSION

The Board finds that the Office properly denied appellant's compensation claim on the grounds that he did not establish that his claim was filed within the applicable time limitation provisions of the Act.

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 17, 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

¹⁰ *Marcelo Crisostomo*, 42 ECAB 339 (1991).