



he had been exposed to loud noise while working for the employing establishment from 1963 to 1998.

By letter dated December 16, 2004, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. The Office stated that appellant had 30 days to submit the requested information.

Appellant submitted a December 22, 2004 statement in which he alleged that he gradually became aware that he had a work-related hearing loss during the late 1990's, when he had difficulty hearing crickets at night. He asserted that he became convinced he had sustained an employment-related hearing loss by September 2001, after undergoing medical tests. Appellant stated that he filed a claim for hearing loss in 2003 because that was when he obtained medical reports which verified his hearing loss.

Appellant submitted a June 24, 2003 report from Dr. Joseph L. Petrussek, a Board-certified otolaryngologist, who stated that appellant had a bilateral sensorineural hearing loss causally related to work-related noise exposure. He performed an audiogram which, he asserted, indicated that he sustained a somewhat asymmetrical sensorineural hearing loss in the higher frequencies.

By decision dated January 19, 2005, the Office denied appellant's claim, finding that he failed to file a timely claim under section 8122.

On January 31, 2005 appellant requested an oral hearing, which was held on November 15, 2005.

By decision dated January 11, 2006, an Office hearing representative affirmed the January 19, 2005 Office decision.

### **LEGAL PRECEDENT**

Section 8122(a) of the Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."<sup>1</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 his employment and the compensable disability.<sup>2</sup> The statute provides an exception, which states that a claim may be regarded timely if an immediate superior 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.<sup>3</sup>

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<sup>1</sup> 5 U.S.C. § 8122(a).

<sup>2</sup> 5 U.S.C. § 8122(b).

<sup>3</sup> 5 U.S.C. § 8122(a)(1); *see Eddie L. Morgan*, 45 ECAB 600 (1994); *Jose Sales*, 41 ECAB 743 (1990).

### ANALYSIS

In the instant case, appellant retired from the employing establishment in 1998, by which time he had admittedly become aware he had sustained some hearing loss. The date he was last exposed to the factors of his employment which allegedly caused his condition constitutes the date of injury. Yet appellant alleges that he did not realize that he had a hearing loss caused by his employment until September 1, 2001. Appellant did not file his claim until July 28, 2003. In a case of latent disability the time limitation does not run from the date of injury, but rather from the date that 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 condition/disability. In his December 22, 2004 statement, appellant acknowledges that he became aware of some hearing loss prior to his retirement in 1998. He then states that he realized that the hearing loss was related to his employment at the same time as he was aware of his hearing loss: "The connection was obvious to me." The claim therefore should have been filed within three years of his 1998 retirement, certainly no later than 2001.

Furthermore, the evidence does not indicate that appellant provided any notice of injury to his supervisor prior to this time, or that anything occurred to make his supervisor reasonably aware that he sustained an occupational disease or condition relating to his employment. The Board therefore finds that appellant failed to file his claim for hearing loss within the applicable time limitation provisions. The Office therefore properly found in its January 19, 2005 decision that appellant failed to file a timely claim. Following the January 19, 2005 decision, appellant requested an oral hearing, but did not submit any additional evidence indicating he filed a timely claim. The Board therefore affirms the January 11, 2006 decision of the Office hearing representative affirming the January 19, 2005 Office decision denying appellant's claim for a schedule award based on hearing loss.

### CONCLUSION

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2006 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: June 5, 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