

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

C.D., Appellant)

and)

TENNESSEE VALLEY AUTHORITY, WATTS)
BAR NUCLEAR PLANT, Spring City, TN,)
Employer)

**Docket No. 06-1736
Issued: November 7, 2006**

Appearances:
Appellant, 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 July 24, 2006 appellant filed a timely appeal of a June 28, 2006 decision of the Office of Workers' Compensation Programs with respect to appellant's hearing loss claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the June 28, 2006 decision.

ISSUE

The issue is whether appellant's claim was timely filed within the applicable time limitations of the Federal Employees' Compensation Act.

FACTUAL HISTORY

On September 14, 2005 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss as a result of his federal employment. He stated that he worked around large motors and other equipment as an electrician in a power plant. In response to a question as to when he became aware that the condition was caused or aggravated

by employment, appellant reported October 15, 1980. The reverse of the claim indicated that appellant first reported the condition to a supervisor on December 12, 2005 and appellant was last exposed to noise on July 27, 1987.

Appellant submitted a statement noting his work history from 1976 to 1996. He stated, “I reported to [s]upervisors a number of times, it seemed they ignored it and showed little or no interest.” According to appellant, he had his hearing tested when he left federal employment and he had hearing loss in both ears, worse in the left ear.

The employing establishment submitted a January 27, 2006 letter which indicated that appellant was employed from October 3, 1977 to July 27, 1987. The letter stated that appellant’s employment was terminated in 1987, and that he had no ratable hearing loss at that time. The record contains employing establishment audiograms performed in September 1977, March 1980, June 1982 and March 1987. An employing establishment medical report dated March 17, 1987 contained diagnoses of hiatal hernia and high frequency hearing loss.

By decision dated June 28, 2006, the Office denied the claim for compensation on the grounds that it was not filed within the time limitations of the Act. The Office found that the employing establishment did not have actual knowledge as appellant’s employment was terminated in 1987 at which time he had no ratable hearing loss.

LEGAL PRECEDENT

The Act provides that “an original claim for compensation for disability or death must be filed within three years after the injury or death.”¹ 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. § 8119.² In a case of latent disability, the time for giving notice begins to run when the employee is aware, or by the exercise of reasonable diligence should have been aware, that his condition is causally related to his employment, whether there is compensable disability.³ 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.⁴

The Board has held that a program of annual audiometric examinations conducted by an employing establishment may constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury.⁵

¹ 5 U.S.C. § 8122(a).

² *Id.*

³ 5 U.S.C. § 8122(b).

⁴ *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁵ *Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3c and 6c (March 1993).

ANALYSIS

Appellant indicated on his claim form that he became aware of the hearing loss and its relationship to employment in October 1980. The employing establishment reported that appellant was last exposed to noise in his federal employment on July 27, 1987. Based on the evidence, the three-year time limitation began to run on July 27, 1987. As noted above, a claim may also be established as timely if the immediate supervisor had actual knowledge of the injury within 30 days. Although appellant referred to reporting to his supervisors, he did not provide any relevant detail or evidence to support a finding that a supervisor had actual knowledge within 30 days of the injury.

The evidence of record contains audiograms performed by the employing establishment in 1977, 1980, 1982 and 1987. The Office made a brief finding that appellant “was terminated in 1987 with no ratable hearing loss; therefore, [the] agency did not have actual knowledge that you had an injury during the time you were employed by [the employing establishment] from 1977 to 1987.” The issue is not whether appellant had a ratable hearing loss at the time his federal employment ended. The extent of the hearing loss is relevant to a claim for a schedule award, but a claimant may establish a claim for an employment-related hearing loss that is not “ratable” pursuant to the formula used in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. As the Board explained in *Roger D. Dicus*,⁶ the issue is a medical issue of whether there was a decrease in hearing acuity revealed by the employing establishment audiograms. An Office medical adviser should render an opinion on that issue, and then the Office may properly make a finding as to whether the employing establishment had constructive knowledge of an employment-related hearing loss.⁷

The case will be remanded to the Office to secure a medical opinion on the relevant issue. After such further development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The case is remanded to the Office for further development on whether the employing establishment audiograms provided constructive knowledge of an employment-related hearing loss.

⁶ 56 ECAB ___ (Docket No. 04-2122, issued January 27, 2005).

⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 28, 2006 is set aside and the case remanded for further actions consistent with this decision of the Board.

Issued: November 7, 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