United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 07-1014**
	)	**Issued: August 17, 2007**
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer	)	

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 March 5, 2007 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated September 21 and October 25, 2006. Appellant also timely appealed the Office's February 16, 2007 decision which denied further merit review of his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the appeal.

ISSUES

The issues are: (1) whether appellant's claim for compensation was filed within the time limitations set forth in 5 U.S.C. § 8122; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits of his claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 29, 2005 appellant, then a 38-year-old city carrier, filed an occupational disease claim for carpal tunnel syndrome. He first became aware of his condition on February 4, 2002. Appellant alleged that he was given an inadequate diagnosis. William A.

Dehler, a manager of customer services at the employing establishment, indicated that appellant was terminated on May 9, 2002 and that appellant did not report his condition to a supervisor until November 29, 2005.

In support of his claim, appellant submitted an August 5, 2005 statement in which he described his job activities. He alleged that his duties included delivering and picking up mail from 18 different businesses and lifting boxes weighing between 30 and 80 pounds. Appellant alleged that, in one complex, he had to walk almost a mile to and from his truck using a steel wheeled skid, weighing approximately 100 pounds. He further alleged that, while lifting the boxes and mail, he experienced a burning sensation in his hand. Appellant alleged that he mentioned it to his supervisor, "Lou," who "insisted" that he should not tell anyone as his job might be jeopardized. He alleged that the pain worsened and he saw a nurse at the employing establishment, who did not do anything for him.

In a statement dated December 12, 2005, Mr. Dehler contended that appellant's claim was filed more than three years after he was terminated from the employing establishment. He also questioned appellant's explanation regarding his employment duties and indicated that the employing establishment did not accept parcels weighing over 70 pounds. Appellant denied that there was a route that required a city carrier to walk over a mile to a delivery and back. Mr. Dehler's statement was accompanied by an accident reporting notice instructing employees to report all injuries and a position description.

In a letter dated December 29, 2005, the Office requested additional evidence regarding the claim. The Office received a copy of appellant's previously submitted statement and a November 21, 2005 medical treatment note from an individual whose name is not clearly set forth.

By decision dated March 13, 2006, the Office denied the claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. The Office found that the evidence did not support that appellant's immediate supervisor had actual knowledge of the injury within 30 days.

On March 21, 2006 appellant requested a hearing, which was scheduled for August 7, 2006. However, he subsequently requested a review of the written record. The Office received an additional copy of appellant's August statement.[1]

By decision dated September 21, 2006, the Office hearing representative affirmed the March 13, 2006 decision.

On October 16, 2006 appellant requested reconsideration. He alleged that the paperwork the Office currently had was the second claim that he had filed, as he had originally filed a claim in 2003, which was signed by the proper person. Appellant stated that he was sending the Office a copy of the first claim form that he submitted, which was signed by Mr. Dehler in 2003.[2] He

[1] The Board notes that the statement date was changed from August 5 to 15, 2006; however, the contents are identical.

[2] The claim form did not accompany the reconsideration request.

alleged that his wrist began to hurt and that when he complained to his supervisor, his job was shifted. Appellant alleged that he used public transportation to get to his job and when the employing establishment shifted his job location, he was unable to get there in a timely manner and he was fired for "unsatisfactory service -- poor attendance."

By decision dated October 25, 2006, the Office denied modification of the September 21, 2006 decision.

By letter dated November 1, 2006, appellant requested reconsideration. He alleged that his claim was timely filed in 2003.

On November 9, 2006 the Office received a copy of an occupational disease claim form signed by appellant on September 16, 2003. The form indicated that appellant first realized his disease or illness was caused by his employment on February 26, 2002. He alleged that he had a strain of his right hand and back which caused knots. Appellant alleged that his notice was not filed within 30 days because he did not want to lose his job. It was signed by Mr. Dehler on September 22, 2003, who advised that appellant was terminated for an unsatisfactory record of service. He also noted that no medical documentation was provided.[3]

On December 27, 2006 appellant repeated his request for reconsideration. He also noted that he was originally diagnosed with a ganglion cyst, but it was later determined to be carpal tunnel.

By decision dated February 16, 2007, the Office denied further review of the merits. It found that his request neither raised substantial legal questions nor included new and relevant evidence and was insufficient to warrant review of its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of the Federal Employees' Compensation Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[4] 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.[5] 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.[6] Even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of the injury or

[3] The September 22, 2003 occupational disease claim form was adjudicated by the Office as File No. 112018474. File No. 112018474 is not before the Board on the present appeal.

[4] 5 U.S.C. § 8122(a).

[5] 5 U.S.C. § 8122(b).

[6] *See Garyleane A. Williams*, 44 ECAB 441 (1993).

death within 30 days or written notice of the injury as specified in section 8119 was provided within 30 days.[7]

ANALYSIS -- ISSUE 1

Appellant alleged that he became aware of his carpal tunnel syndrome and its relation to his employment on February 4, 2002. The manager of customer service, Mr. Dehler, indicated that appellant was terminated on May 9, 2002. Appellant filed his claim for an occupational disease on November 29, 2005. Since appellant's last exposure at the employing establishment was May 9, 2002, his claim was not filed within three years of his last exposure to employment factors alleged to have caused his claimed condition. Appellant, therefore, did not file the claim within three years of the injury.

As noted above, a claim may be timely notwithstanding the failure to file within three years, if the immediate superior had actual knowledge of the injury within 30 days or written notice of injury was given 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.[8] Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days pursuant to 5 U.S.C. § 8119.[9] In the instant case, the employing establishment denied the allegations submitted by appellant and alleged that the claim was untimely filed. There is no indication that a supervisor had actual knowledge of the presently claimed injury within 30 days of May 9, 2002, the date of his last exposure. Appellant had not shown that his supervisor was put on notice, and in fact, the employing establishment has denied his allegations. For these reasons, by its decisions dated March 13, September 21 and October 25, 2006, the Office properly determined that appellant's claim was not timely and is barred by the applicable time limitation provisions of the Act.

LEGAL PRECEDENT -- ISSUE 2

Under section 8128(a) of the Act,[10] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
>
> "(ii) Advances a relevant legal argument not previously considered by [the Office]; or

[7] 5 U.S.C. § 8122(a)(1); *see also Larry Young*, 52 ECAB 284 (2001).

[8] *Kathryn A. Bernal*, 38 ECAB 470 (1987).

[9] 5 U.S.C. §§ 8122(a)(1), 8122(a)(2).

[10] 5 U.S.C. § 8128(a).

"(iii) Constitutes relevant and pertinent new evidence not previously considered by [the Office]."[11]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[12]

ANALYSIS -- ISSUE 2

Appellant disagreed with the denial of his claim and requested reconsideration. The underlying issue on reconsideration was whether appellant's claim was filed in a timely manner. The Board finds that appellant has not shown that the Office erroneously applied or interpreted a specific point of law, advanced a relevant legal argument not previously considered by the Office, and has not submitted relevant and pertinent new evidence not previously considered by the Office.

In his request for reconsideration, appellant asserted that he timely filed his claim and in support of his contention provided a copy of an occupational disease claim form that he filed on September 16, 2003. He alleged that this was the first claim that he had filed in relation to his case, and that it was signed by the proper individual. This claim referred to strains of the right hand and back and indicated that appellant was aware of his condition and its relation to his employment on May 26, 2002. Mr. Dehler signed the form on September 22, 2003. However, this evidence is not relevant as the September 16, 2003 notice of occupational disease pertains to another claim that was developed and adjudicated separately by the Office and which is not presently before the Board.[13]

The Board finds that appellant has submitted insufficient evidence or argument to warrant further merit review of his claim.

CONCLUSION

The Board finds that the Office properly found that appellant's claim was barred by the applicable time limitation provisions of the Act. The Board also finds that the Office properly refused to reopen appellant's claim for further review of the merits under 5 U.S.C. § 8128(a).

[11] 20 C.F.R. § 10.606(b).

[12] 20 C.F.R. § 10.608(b).

[13] *See supra* note 3.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 16, 2007, October 25 and September 21, 2006 are affirmed.

Issued: August 17, 2007
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