

her claim and allow her 30 days in which to submit such evidence in compliance with Office regulations. In an April 23, 2008 decision, the Board affirmed a September 21, 2007 Office decision which denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.² The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.³

On May 14, 2008 appellant requested reconsideration, asserting that her claim was timely because her supervisor was aware of her work injury and accompanied her to the hospital on December 4, 1993. She believed her supervisor was an authorized agent for the employing establishment which permitted him to accompany her to the hospital. Appellant alleged that she was required to prepare a follow-up report of her injury and prepared a written report; however, she failed to sign it.

Appellant submitted emergency room records from December 4, 1993 where she was treated by Dr. Stephen J. Kraus, a Board-certified emergency room physician, for left arm, leg and side injury. Dr. Kraus diagnosed left hand fracture. The records noted that appellant was accompanied by her supervisor and advised that this was a workers' compensation injury and that the bill would be sent to the employing establishment. An x-ray of the left wrist dated December 4, 1993 revealed a possible but doubtful fracture of the navicular bone. An electromyogram dated April 18, 1994, revealed right carpal tunnel syndrome.

Appellant submitted medical records from Dr. William M. Craven, a Board-certified orthopedist, from April 1, 1996 to November 8, 2000, who treated appellant for right wrist tendinitis, carpal tunnel syndrome and left knee pain from a twisting injury at work. On March 10, 1999 appellant presented with neck and right shoulder pain and he diagnosed carpal tunnel syndrome, myalgia and cervical strain. Other reports from Dr. Craven dated January 2, 2001 to March 29, 2004 noted appellant's treatment for cervical radiculopathy, trigger thumb, nerve impingement and degenerative disc disease. He opined that appellant reached maximum medical improvement on January 2, 2001 and released her from his care. In a report dated August 27, 2007, previously of record, Dr. Craven noted initially treating appellant on December 4, 1996 for chronic tendinitis and impingement of the right shoulder. He determined that appellant's current diagnosis was related to her original compensation injury involving repetitive use syndrome. In an April 17, 1997 attending physician's report, Dr. James Blevins, a Board-certified psychiatrist, diagnosed depression and noted that appellant sustained an accident on the job followed by a new depression. In a March 23, 2000 report, Dr. Donald S. Orr, a Board-certified neurologist, noted seeing appellant for right shoulder, neck and upper extremity pain and diagnosed right shoulder girdle and right upper extremity pain, suspect muscle contraction headaches and low back pain. Other reports from Dr. Bruce E. Atkinson, a

² Docket No. 08-28 (issued April 23, 2008).

³ On December 14, 2006 appellant, then a 62-year-old clerk, filed an occupational disease claim alleging that she fell at work on December 4, 1993 and developed tendinitis of the right shoulder. She indicated that she first became aware of the condition on March 31, 1999 but also stated that she first realized the condition was aggravated by factors of her federal employment on December 4, 1993. Appellant retired on September 20, 2005. She filed a claim for an injury which occurred on December 4, 1993 which was accepted for bilateral carpal tunnel syndrome, File No. xxxxxx847. Appellant also filed a claim for a left arm injury which occurred on December 4, 1993 when she fell at work which was accepted by the Office in File No. xxxxxx417.

psychologist, dated May 26, 2000 and February 13, 2002, noted appellant's treatment for extreme anxiety and emotional liability related to a hostile work environment. An October 23, 2000 functional capacity evaluation, noted that appellant could not perform medium to heavy work but could perform modified sedentary work. Also submitted were letters from appellant's attorney dated April 12, 2004 to June 8, 2005 to appellant's physician's requesting an impairment rating and an opinion as to whether her condition was work related.

By decision dated June 24, 2008, the Office denied modification of the September 21, 2007 decision finding that the evidence did not demonstrate that her claim was timely filed in accordance with 5 U.S.C. § 8122.

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."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

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if her immediate supervisor had actual knowledge of her 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.⁷ An employee must show not only that her immediate superior knew that she was injured, but also knew or reasonably should have known that it was an on-the-job injury.⁸

ANALYSIS

In its June 24, 2008 decision, the Office reviewed the merits of appellant's claim but determined that the evidence did not demonstrate that her claim was timely filed in accordance with 5 U.S.C. § 8122. As found in the Board's April 23, 2008 decision, she first became aware of a connection between her shoulder condition and her employment on December 4, 1993 and she was last exposed to the work duties that caused her condition in 1993. Since appellant did not file a claim until December 14, 2006 her claim was filed outside the three-year time limitation period under section 8122(b).

⁴ 5 U.S.C. § 8122(a).

⁵ *Id.* at § 8122(b).

⁶ See *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993); *Alicia Kelly*, 53 ECAB 244 (2001); *Mitchell Murray*, 53 ECAB 601 (2002).

⁷ 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).

⁸ *Charlene B. Fenton*, 36 ECAB 151 (1984).

On reconsideration, appellant asserted that her claim was timely because her supervisor was informed of the work injury in a timely manner. In fact, she indicated her supervisor not only was aware of her work injury but also accompanied her to the hospital on December 4, 1993. Appellant alleged that her supervisor prepared a follow-up report of her injury but failed to sign it. The record, however, contains no evidence that appellant's supervisor had actual knowledge of the work injury or that written notice of the injury was given within 30 days. The Board has held that unawareness of possible entitlement, lack of access to information and ignorance of the law or of one's rights and obligations under it do not constitute exceptional circumstances that could excuse a failure to file a timely claim.⁹

Appellant submitted various medical records, such as the December 4, 1993 emergency room records which noted that she was treated by Dr. Kraus for a left arm, leg and side injury, including a left hand fracture. This emergency room record indicates that she was accompanied by her supervisor and advised that this was a workers' compensation injury and that the bill would be sent to the employing establishment. The Board notes that this establishes that appellant fell and injured her arm and indicates awareness of her slip and fall injury on December 4, 1993, which was subsequently accepted by the Office for a left arm condition in claim, File No. xxxxxx417. However, this report does not indicate supervisory knowledge of the subsequently claimed right shoulder tendinitis which developed when she returned to work in a modified position. Therefore, this medical record does not establish that appellant's supervisors were reasonably on notice of a work-related injury caused by performing her repetitive light-duty clerk duties.¹⁰ 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 thereto.¹¹

Other medical records submitted by appellant do not purport to show that her immediate supervisor had actual knowledge of her alleged tendinitis of the right shoulder within 30 days. The evidence submitted on reconsideration also does not support that timely written notice of injury was provided within 30 days.¹²

Therefore, the Board finds that appellant has not established actual knowledge by her supervisors of her work-related condition within 30 days and therefore has not established a timely claim. The record is void of any indication that appellant's immediate supervisors had

⁹ *Roger W. Robinson*, 53 ECAB 846, 851 (2003).

¹⁰ *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).

¹¹ *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).

¹² *See* 5 U.S.C. § 8122(a)(1) and (2).

written notice of the work-related injury claimed in this case within 30 days. The exceptions to the statute have not been met, and thus, appellant has failed to establish that she filed a timely claim on December 14, 2006.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the June 24, 2008 and September 21, 2007 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 6, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board