



June 29, 2004. Appellant indicated that he did not file a claim within 30 days of that date because he was unaware he was HIV positive until June 2004.<sup>1</sup>

In an undated statement, appellant indicated that in June 2004 he tested positive for HIV after undergoing a complete physical examination. He noted that his treating physician believed that he had the virus for over 10 years based on the laboratory results. When appellant met with his physician on June 29, 2004, they investigated how and where he contracted HIV. During this discussion, he realized that he contracted the disease at work as he recalled a February 2, 1992 incident when he cut his hand on a glass test tube and later that day pierced his bandaged hand with a syringe from an HIV positive patient. Appellant submitted medical records pertaining to treatment for a right thumb laceration.

The Office advised appellant of the factual and medical evidence needed to establish his claim. Appellant submitted a June 29, 2004 report from Dr. William Redenius, a Board-certified internist, who advised that appellant sought treatment from him after being diagnosed with HIV on June 7, 2004. Dr. Redenius noted appellant's belief that he contracted HIV while working at the employing establishment. He diagnosed HIV, hypothyroidism, hypercholesterolemia, panic attacks and depression. Appellant submitted additional medical records from Dr. Redenius and other physicians regarding his treatment.

In an undated statement, appellant noted that he retired from federal employment on December 26, 1997, and therefore, could not notify his supervisor of his HIV status which was diagnosed in June 2004. He did not previously relate his condition to his employment because he had retired when he was diagnosed with HIV. Appellant subsequently attributed his HIV exposure to a needle penetration incident at work. He delayed filing his claim because he did not know where to file it.

In a September 10, 2008 report, Dr. Christopher Crowe, an osteopath specializing in infectious disease medicine, obtained a history of exposure from appellant who indicated that in February 1992 he sustained a needle puncture from an individual with HIV. He opined that it was most likely that this needle puncture exposure resulted in appellant's HIV disease. Dr. Crowe diagnosed HIV positive, narrowing of the esophagus, gastroesophageal reflux disease, hypothyroidism, renal calculi and hypertriglyceridemia.

By decision dated October 31, 2008, the Office denied appellant's claim, finding that it was not timely filed as he was aware of the relationship between his HIV condition and his employment by June 29, 2004 and did not file a claim until July 22, 2008.

### **LEGAL PRECEDENT**

Section 8122(a) of the Act<sup>2</sup> states that "[a]n original claim for compensation for disability or death must be filed within three years after the injury or death." Section 8122(b) provides that

---

<sup>1</sup> The Board notes that the "supervisor's report" section of Form CA-2 was not completed or signed by the employing establishment.

<sup>2</sup> 5 U.S.C. § 8122(a).

“in a case of latent disability, the time limitation does not begin to run until the employee has a compensable disability and is aware, or by the exercise of reasonable diligence should have been aware, of the causal relationship of the compensable disability to his employment.”<sup>3</sup>

The Act provides an exception to the three-year limit for filing a claim, stating that a claim may be regarded timely if an immediate superior had actual knowledge of the injury within 30 days, or if written notice of injury as specified in section 8119 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.<sup>4</sup> Office regulations also provide that the Office “may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances.”<sup>5</sup>

### ANALYSIS

The Board finds that appellant’s compensation claim was not timely filed within the provisions of the Act.

Appellant alleged that he contracted HIV after he sustained a syringe puncture to his hand on February 2, 1992. He was unaware of his condition until June 29, 2004 when he was diagnosed with HIV by his treating physician. Appellant asserted that he was unaware of any relationship between his federal employment and his condition until June 29, 2004. His occupational disease claim, filed on July 22, 2008, was not within the three-year time limitation set forth in the Act. As noted, the time limitation period for occupational disease claims begin to run when the employee becomes aware or reasonably should be aware that his employment caused his condition. Accordingly, the time limitation in this case began to run on June 29, 2004, the date on which he learned from Dr. Redenius that he contracted HIV due to a February 2, 1992 syringe puncture incident at work.<sup>6</sup> As more than three years had elapsed between June 29, 2004 and the filing of his occupational disease claim on July 22, 2008, appellant’s claim is barred under section 8122.

Appellant’s claim does not qualify under either of the exceptions as provided by the Act and its implementing provisions. The first exception would regard the claim as timely filed if an immediate superior had actual knowledge of the injury within 30 days. However, appellant retired from federal employment on December 26, 1997 and was diagnosed with HIV on June 7, 2004. He noted that his supervisor did not have actual knowledge of his condition within 30 days. Additionally, appellant did not file his claim sooner as he did not know where to file it. The Board has held that an employee’s unawareness of possible entitlement, lack of access to

---

<sup>3</sup> *Id.* at § 8122(b).

<sup>4</sup> *Id.* at § 8122(a); *Virginia D. King (Charles B. King)*, 57 ECAB 143 (2005).

<sup>5</sup> 20 C.F.R. § 10.100(b)(2).

<sup>6</sup> *See Mitchell Murray*, 53 ECAB 601 (2002) (where the Board held that the time limitation period does not begin to run until appellant is aware of the causal relationship between his federal employment and his condition).

information or ignorance of the law and one's rights and obligations does not constitute exceptional circumstances that could excuse a failure to file a timely claim.<sup>7</sup>

Consequently, appellant's claim is barred by the applicable time limitation provisions of the Act.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated October 31, 2008 is affirmed.

Issued: September 8, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

---

<sup>7</sup> *Ralph L. Dill*, 57 ECAB 248, 254 (2005).