United States Department of Labor
Employees' Compensation Appeals Board

M.D., Appellant	)	
and	)	**Docket No. 10-938**
	)	**Issued: January 10, 2011**
U.S. POSTAL SERVICE, POST OFFICE, Islandia, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 18, 2010 appellant, through his attorney, filed a timely appeal from the Office of Workers' Compensation Programs' August 25, 2009 and February 1, 2010 merit decisions denying his claim as untimely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant's claim for bilateral carpal tunnel syndrome is barred by the applicable time limitation provisions of the Act.

FACTUAL HISTORY

On May 12, 2009 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome (CTS) as a result of his employment activities. He last worked for the employing establishment on February 2, 2003. Appellant first became aware of his condition on July 1, 2002 and first realized that his condition was caused or aggravated by his employment on August 21, 2002.

In a June 1, 2009 letter, the employing establishment controverted appellant's claim as untimely because it was filed more than three years after the onset of the alleged disease and he was no longer an employee.

By letter dated June 25, 2009, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested he submit a written statement in response to the employer's controversion, as well as any supporting evidence that his immediate supervisor had actual knowledge of a work-related medical condition within 30 days of the date of injury. The Office also requested that the employer provide a statement detailing appellant's job duties, dates of employment and a response to his allegations.

Appellant submitted additional medical and factual evidence including a July 30, 2009 statement alleging that he was first diagnosed with carpal tunnel syndrome in 1997 and, as a result, changed assignments from a walking route to curb side delivery. He alleged that John Coyle, his supervisor, informed him that he did not have a claim and, if he proceeded, would face serious action because of his sick leave. In late 1999 appellant informed Rich Parker, his supervisor, that his pain had worsened. Mr. Parker allegedly told him not to file a claim because carpal tunnel was not covered as an occupational disease or work-related injury and warned appellant about missing work. Appellant did not file a claim for carpal tunnel because he thought it was not covered and did not become aware that it was a compensable injury until he was informed of the fact by his lawyer.

By decision dated August 25, 2009, the Office denied appellant's claim on the grounds that it was not timely filed. It found that the date of injury was the date of his last occupational exposure, February 2, 2003, and that he should have been aware of a possible relationship between his employment and the claimed condition by February 2, 2006, three years after the date of last exposure. As appellant's claim was filed on May 12, 2009, more than six years after the date of the last exposure, the Office found that it was untimely filed. The Office also found that the file did not contain any evidence to establish that he notified his supervisor of his work-related injury within 30 days.

On September 4, 2009 counsel requested an oral hearing before an Office hearing representative that took place on December 10, 2009. At the hearing, appellant stated that he first realized he had work-related carpal tunnel in the fall of 2002. Counsel asked appellant if he knew he might suffer from work-related carpal tunnel syndrome years ago and he stated that he did not. He argued that the three-year statute of limitations should start to run when he advised appellant that he might have work-related carpal tunnel syndrome in 2008.

By decision dated February 1, 2010, an Office hearing representative affirmed the August 25, 2009 decision. He found that appellant did not file his claim within three years from when he was injured, he was last exposed to working conditions which contributed to his injury, on or after he became aware of his condition. The hearing representative noted that appellant's Form CA-2 stated that he realized his condition was employment related in 2002 and that he failed to present any evidence that he had reported problems with his hands to his supervisor in 1999.

LEGAL PRECEDENT

In cases of injury on or after September 7, 1974, section 8122(a) of the Act provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

> "(1) the immediate superior had actual knowledge of the injury or death 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; or
>
> "(2) written notice of injury or death as specified in section 8119 was given within 30 days."[1]

The three-year time period begins to run from the time the employee is aware or by the exercise of reasonable diligence should have been aware, that his or her condition is causally related to the employment. For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate superior knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.[2]

Even if an original claim for compensation for disability or death is not filed within three years after the injury or death, compensation for disability or death may be allowed if written notice of injury or death as specified in section 8119 was given within 30 days. Section 8119 provides that a notice of injury or death shall be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day and hour when and the particular locality where the injury or death occurred; state the cause and nature of the injury or, in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.[3] Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.[4]

In a case of occupational disease, the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been aware, of a possible relationship between his condition and his employment. When an employee becomes aware or reasonably should have been aware that he has a condition which has been adversely affected by factors of his federal employment, the limitation period begins to run even if the employee does not know the precise nature of the impairment or whether the ultimate result of such affect will be temporary or permanent.[5] Where the employee continues in the same employment after he or

[1] 5 U.S.C. § 8122(a).

[2] *Duet Brinson*, 52 ECAB 168 (2000).

[3] *Larry E. Young*, 52 ECAB 264 (2001).

[4] *Laura L. Harrison*, 52 ECAB 515 (2001).

[5] *Larry E. Young*, *supra* note 3.

she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of the federal employment awareness, the time limitation begins to run on the date of the last exposure to the implicated factors.[6] The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.[7]

ANALYSIS

Appellant claimed that he developed bilateral carpal tunnel syndrome due to conditions of his employment as a letter carrier. By decisions dated August 25, 2009 and February 1, 2010, the Office denied his claim on the grounds that it was untimely filed. The Board finds that appellant's claim for compensation is barred by the applicable time limitation provisions of the Act.

Although appellant was last exposed to his working conditions on February 2, 2003 when he retired, he acknowledged on his Form CA-2 that he became aware that his carpal tunnel syndrome was caused by his employment by August 21, 2002. At the December 10, 2009 oral hearing, he stated that he first realized he had work-related carpal tunnel in the fall of 2002. Appellant did not deny knowing that his condition was caused by his employment, but rather blamed his delay in filing a claim on his supervisors who allegedly misinformed him that carpal tunnel was not compensable under workers' compensation and discouraged him from filing a claim. He acknowledged discussing the possibility of filing a claim with his supervisors. It appears by appellant's own account that he was aware of a condition related to his employment and of a compensable injury. The Board finds that the evidence establishes that appellant knew or reasonably should have known of a relationship between his claimed condition and factors of his employment as a letter carrier at the time of his last exposure in 2002.

When an employee continues in the same employment after he reasonably should have been aware that he has a condition which has been adversely affected by factors of federal employment,[8] the time limitation begins to run on the date of the last exposure to the implicated factors.[9] Therefore, the time limitation in this case began to run on February 2, 2003, appellant's last day of work and exposure to the implicated employment factors. Since he did not file a claim until May 12, 2009, his claim was filed well outside the three-year limitation period.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if his immediate supervisor had actual knowledge of the injury within 30 days of his last exposure to the conditions alleged to have caused his condition; *i.e.*, within 30 days of February 2, 2003. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-

[6] *Id.*

[7] *Debra Young Bruce*, 52 ECAB 315 (2001).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993); *see James A. Sheppard*, 55 ECAB 515 (2004).

[9] *Id.*

job injury or death.[10] Additionally, the claim would be deemed timely if written notice of injury or death was provided within 30 days.[11] Appellant's July 30, 2009 factual statement indicated that he first reported his carpal tunnel syndrome to his supervisor in 1997 and again to his new supervisor in 1999 after he changed assignments. This statement is, in and of itself, insufficient to establish that his supervisors were placed on notice of an on-the-job-injury. Appellant did not submit evidence to establish that his immediate supervisor or other official or employing establishment physician or dispensary had actual knowledge of his claimed employment injury within 30 days after the date of his last exposure to the implicated employment factors.[12] Even if he submitted a statement from his supervisors alleging that he had reported complaints of carpal tunnel syndrome, this statement would not be sufficient to establish that the immediate superior had actual knowledge of a work-related injury as the statement only makes a vague reference to his health and does not indicate that he sustained any specific employment-related injury.[13]

The Board finds that appellant has not established actual knowledge by his supervisors of his work-related condition within 30 days. Therefore, he has not established a timely claim.

Appellant argues that he is the victim of an exceptional circumstance and asserts that his supervisors effectively prevented him from filing a claim by misinforming him as to his eligibility under the Act. Section 8122(d)(3) of the Act provides that, time limitations for filing a claim do not run against any individual whose failure to comply is excused by the Secretary on the grounds that such notice could not be given because of exceptional circumstances.[14] None of the exceptions relating to appellant's ability to file a claim apply in this case. Appellant was not a minor, has not alleged that he was incompetent and has not provided evidence of an exceptional circumstance that would excuse his failure to timely file a claim.[15] His excuse for not filing a timely claim was that Mr. Coyle, his supervisor, told him he did not have a claim in 1997 and his supervisor Rich Parker told him carpal tunnel was not covered under an occupational disease or work-related injury in 1999. At the hearing, appellant further stated that it first came to his attention that his carpal tunnel was work related in late 2002. His attorney

[10] 5 U.S.C. § 8122(a)(1); *see Jose Salaz*, 41 ECAB 743, 746 (1990); *Kathryn A. Bernal*, 38 ECAB 470, 472 (1987).

[11] *Id*. at § 8122(a)(1) and (2).

[12] *See Ralph L. Dill*, 57 ECAB 248 (2006) (appellant's statement on his claim form that he reported his injury to his supervisor was insufficient to show that his supervisor was on notice in the absence of other evidence that his supervisor had actual knowledge of a work injury within 30 days of his last workplace exposure).

[13] *See Linda J. Reeves*, 48 ECAB 373 (1997).

[14] 5 U.S.C. § 8122(d)(3).

[15] *E.B.* (*N.B)*, 58 ECAB 642 (2007).

argued that he only suspected his carpal tunnel to be work related and did not become aware of his work-related injury until he spoke with counsel in 2008; however, the Board has held that unawareness of possible entitlement,[16] lack of access to information[17] and ignorance of the law or of one's obligations under it[18] do not constitute exceptional circumstances that could excuse a failure to file a timely claim.[19]

The evidence of record is also insufficient to establish that the above conversations occurred. Appellant alleges that, in his conversations with his supervisors, they should have known of his carpal tunnel syndrome and misled him not to file a claim. He provided the names of his supervisors, but did not provide dates for such conversations or other information which would allow the Office to verify his allegations. These conversations were alleged to have occurred over 10 years ago. It is appellant's burden to establish that these conversations took place and he must substantiate his allegations with probative and reliable evidence. He did not establish that he was prevented from filing a timely claim by exceptional circumstances as that term is used in section 8122(d)(3) of the Act. The Board finds that appellant has not established that he timely filed a claim for compensation within three years after his retirement on February 2, 2003.

CONCLUSION

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

[16] *See supra* note 12.

[17] *Kathryn L. Cornett* (*Elmer Cornett*), 54 ECAB 812 (2003).

[18] *George M. Dickerson*, 34 ECAB 135 (1982).

[19] *Michael Thomas Plante*, 44 ECAB 510 (1993).

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2010 and August 25, 2009 merit decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 10, 2011
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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