

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

A.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Las Vegas, NV, Employer**

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**Docket No. 10-1064
Issued: January 7, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 8, 2010 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated October 26, 2009 and January 28, 2010 denying her occupational disease claim on the grounds that it was not timely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this claim.

ISSUE

The issue is whether the Office properly denied appellant's occupational disease claim on the grounds that it was not timely filed under 5 U.S.C. § 8122.

FACTUAL HISTORY

On October 8, 2009 appellant, a retired 58-year-old window service technician, filed an occupational disease claim alleging that her duties at the postal window caused her to develop carpal tunnel syndrome. She indicated that she first realized her condition on August 27, 2002 and that it was caused or aggravated by her employment on October 29, 2004. Appellant retired on July 1, 2006. With her claim she submitted a September 28, 2009 statement, diagnostic

testing and medical reports diagnosing bilateral carpal tunnel syndrome. The employing establishment challenged the claim on the basis that it was not timely filed.

By decision dated October 26, 2009, the Office denied appellant's claim on the basis that it was not timely filed.

On November 17, 2009 appellant requested reconsideration. She submitted a November 17, 2009 statement along with additional medical reports. In her November 17, 2009 statement, appellant indicated that she did not know there was a time limit for filing a claim. She advised she has three active claims before the Office and that she was not properly diagnosed with carpal tunnel syndrome until May 29, 2009.

In a January 7, 2010 letter to both the employing establishment and appellant, the Office requested that the employing establishment comment on appellant's reconsideration application and statement. Specifically, it asked whether the employing establishment had any knowledge that appellant sustained a bilateral wrist injury and that the injury was due to her work duties and, if so, when it became aware of appellant's condition. The Office also requested that appellant provide a statement as to whether she had advised her immediate supervisor about her condition and her belief that it was related to work.

In a January 14, 2010 statement, appellant reiterated that her hands had given her trouble since August 27, 2002 but it worsened after she retired. She indicated that, when she was working, she was undergoing treatment for other work-related conditions. Appellant stated that she never informed a supervisor about her hand conditions "because at the time she had bigger problems to address." She noted that she was off work for more than three years in a wheel chair with not much time to think of her hands. Appellant stated that she worked for a few months before retiring in 2006. She indicated that she sought help for her hands in 2007 but did not inform a supervisor because she was no longer on duty.

By decision dated January 28, 2010, the Office denied modification of the October 26, 2009 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 Act¹ states that an original claim for compensation for disability or death must be filed within three years after the injury or death.² 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.³ The

¹ 5 U.S.C. § 8122(a).

² *Id.*

³ *Id.* at § 8122(b).

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.⁴

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 the 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.⁵ 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.⁶

ANALYSIS

In its October 25, 2009 and January 28, 2010 decisions, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that her claim was timely filed in accordance with 5 U.S.C. § 8122. Appellant indicated on her claim form that she first became aware of a connection between her hand condition and her employment on October 29, 2004. As she retired on July 1, 2006, she was last exposed to the work duties that caused her condition on June 30, 2006. Since appellant did not file her claim until October 8, 2009, her claim was filed outside the three-year time limitation period under section 8122(b).

The record additionally 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. Appellant's statements and the medical records submitted do not purport to show that her immediate supervisor had actual knowledge of appellant's alleged hand conditions within 30 days or that timely written notice of injury was provided within 30 days.⁷ In fact, in her January 14, 2010 statement, she advised she never informed a supervisor of the claimed condition. Additionally, appellant stated that, when her hand condition worsened after her retirement, she did not inform a supervisor as she was no longer employed. The fact that she had other previous claims for work-related conditions does not establish that the employing establishment had actual timely knowledge of the separate claim for carpal tunnel syndrome. While appellant asserted both before the Office and on appeal that she did not know there was a time limitation to filing a claim, 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.⁸

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

⁴ See *Mitchell Murray*, 53 ECAB 601 (2002); *Alicia Kelly*, 53 ECAB 244 (2001); *Larry E. Young*, 52 ECAB 264 (2001); *Garyleane A. Williams*, 44 ECAB 441 (1993).

⁵ 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).

⁶ *Charlene B. Fenton*, 36 ECAB 151 (1984).

⁷ See 5 U.S.C. § 8122(a)(1) and (2).

⁸ *Roger W. Robinson*, 53 ECAB 846, 851 (2003).

timely claim. The record is void of any indication that appellant's immediate supervisors had written notice of the work-related injury or actual notice of the work-related injury 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 appeal, appellant notes the history of her treatment for carpal tunnel syndrome and her belief that her carpal tunnel syndrome is work related. She also reiterated that she was unaware of the time limitation for filing a claim. As noted, the evidence establishes that appellant did not timely file her claim and her unawareness of the filing requirement does not excuse a failure to timely file a claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 28, 2010 and October 26, 2009 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 7, 2011
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