

condition on July 20, 2004, and that he first realized the condition was caused or aggravated by his employment on August 2, 2010.

Along with his claim, appellant submitted an incomplete, unsigned medical report, bearing a “print” date of July 19, 2006 from the Birmingham Veterans Administration (VA) Medical Center. This report noted that his right hand locked when gripping and pulling during employment and that he wore a right wrist brace during employment and at night.

Appellant also submitted a position description for the mail handler position, which stated that duties required pushing, lifting, pulling and constant use of fingers.

An electromyography nerve conduction study performed on July 21, 2010 by Dr. David B. O’Neal, a neurologist, diagnosed appellant with right ulnar neuropathy, with mild compression of the elbow and right median and ulnar sensory neuropathy.

In a supplemental statement dated August 24, 2010, appellant explained that in July 2010 he visited his family doctor, Dr. Michael Vaughn, Board-certified in occupational medicine, for his wrist pain. Dr. Vaughn then referred him to a specialist, Dr. Stephen R. Steinmetz, Board-certified in plastic surgery.

In a medical note dated July 19, 2010, Dr. Steinmetz diagnosed appellant with CTS after noting findings of positive Tinel’s and Phalen’s tests. The note went on to state that most likely he would proceed with a carpal tunnel release and excision of ganglion cyst. On August 2, 2010 Dr. Steinmetz reported that nerve conduction studies revealed mild ulnar compression at the elbow. He stated that he would proceed with carpal tunnel release and excision of ganglion cyst.

Appellant underwent surgery at the St. Vincent’s Hospital on August 9, 2010, for carpal tunnel release, which was recorded in a medical memorandum from Dr. Steinmetz.

In an October 6, 2010 note, R.C. Johnson, appellant’s former supervisor, stated that he had no knowledge of any complaints appellant had regarding carpal tunnel symptoms. OWCP also received an e-mail exchange dated October 19, 2010, from the employing establishment verifying that appellant retired on October 10, 2006.

On November 15, 2010 the employing establishment controverted appellant’s claim, noting that it was untimely filed and that appellant never mentioned to his supervisor that he had problems with his arms or hands while working at the employing establishment.

OWCP, by letter dated November 19, 2010, requested that appellant submit further evidence regarding the timeliness of his claim letter. It advised him of the deficiencies in his claim, specifically that he had not submitted evidence supporting that he provided timely notification of his work injury.

In response to this letter, appellant submitted an August 12, 2004 medical report from the Birmingham VA Medical Center. This report stated appellant’s diagnosis as CTS and noted that he had been referred for a wrist splint. Appellant had advised when given the wrist splint for CTS that he had never worn a splint before and was not “sure what CTS was.” He was then given an explanation of CTS. This report also indicated that appellant’s CTS was rated as

between 50 percent to 100 percent service connected. Appellant's goals were noted as fulfillment of job physical demands until eligible for retirement in nine years.

In a statement dated December 9, 2010, appellant explained that he "began to notice problems in July 2004," and that "the condition began to worsen over the next couple years," and that he experienced "tingling, numbness, locking of fingers, swelling and severe pain." Further, he noted that "the pain was worsened by any gripping or grabbing with [his] right hand and repetitive flexing of my right wrist."

OWCP also received a note dated December 16, 2010 from Dr. Vaughn, who asserted that appellant's carpal tunnel syndrome "may have been caused by the work that he does with the United States Postal Service."

By a January 20, 2011 decision, OWCP denied appellant's claim on the grounds that appellant's claim was not timely filed. It found that the August 12, 2004 medical report, which included his statement that his "right hand 'locks' with repeated full intensity gripping/pulling required in employment" established his awareness of his condition and that the condition was causally related to his work activities. OWCP concluded that appellant's awareness of the condition was in fact on August 12, 2004, rather than August 2, 2010 as appellant asserted on his occupational disease claim.

LEGAL PRECEDENT

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.² In cases of injury on or after September 7, 1974, section 8122(a) of FECA³ 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.

Section 8119 of FECA⁴ 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

² *Charles Walker*, 55 ECAB 238 (2004); see *Charles W. Bishop*, 6 ECAB 571 (1954).

³ 5 U.S.C. § 8122(a).

⁴ *Id.* at § 8119.

of death, the employment factors believed to be the cause and be signed by and contain the address of the individual giving the notice.⁵ Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.⁶ 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.⁷

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 or she has a condition which has been adversely affected by factors of his federal employment, such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.⁸

Section 8122(b) provides that the time for filing in latent disability cases 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, and the Board has held that the applicable statute of limitations commences to run although the employee does not know the precise nature of the impairment.⁹

Where the employee continues in the same employment after he or she reasonably should have been aware that he or she has a condition which has been adversely affected by factors of federal employment, the time limitation begins to run on the date of the last exposure to the implicated factors.¹⁰ Section 8122(b) of FECA provides that the time for filing in latent disability cases 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.¹¹ The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.¹²

ANALYSIS

As noted above, an original claim for compensation for disability must be filed within three years after the injury. The Board finds that appellant's claim was untimely filed.

⁵ *Larry E. Young*, 52 ECAB 264 (2001).

⁶ *Laura L. Harrison*, 52 ECAB 515 (2001).

⁷ *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁸ *Larry E. Young*, *supra* note 5.

⁹ 5 U.S.C. § 8119(b); *Delmont L. Thompson*, *supra* note 7.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8122(b); *see Luther Williams, Jr.*, 52 ECAB 360 (2001).

¹² *Debra Young Bruce*, 52 ECAB 315 (2001).

Appellant was diagnosed with CTS on August 12, 2004, but did not file his claim until August 24, 2010, and there is no evidence of record to suggest that his supervisor received any notice with regard to his medical condition within 30 days of the injury. The supervisor asserted that appellant never reported any physical problems. As such, appellant's claim can only be considered timely if appellant did not have actual or constructive knowledge that his carpal tunnel condition was caused by his federal employment at any time before August 2007, three years before he filed an occupational disease claim.

As appellant filed for an occupational disease claim, the time for filing his claim begins to run when he first becomes aware, or reasonably should have been aware, of a possible relationship between his condition and his employment. The August 12, 2004 report from the Birmingham VA Hospital establishes that appellant's carpal tunnel syndrome was diagnosed at that time. This report also noted that appellant indicated that he did not know what CTS was, and that appellant was given an explanation of the condition. While this report noted that the condition was 50 to 100 percent service connected, no history was provided linking the diagnosis to appellant's military service. Rather, appellant's goal of continuing in his employment was discussed and appellant was given a wrist splint to wear at work. The incomplete VA Hospital record, bearing a print date of July 19, 2006, indicates that appellant had worn a wrist splint at work and that appellant reported complaints of his right hand locking when gripping and pulling at work. Furthermore, in his statement dated December 9, 2010, appellant noted that, after the August 12, 2004 carpal tunnel diagnosis, "the condition began to worsen over the next couple years ... [t]he pain was worsened by any gripping or grabbing with my right hand and repetitive flexing of my right wrist." Given that the condition was diagnosed in 2004 and appellant admitted his awareness that his condition was exacerbated by his activities at work from 2004 to 2006,¹³ it therefore follows that appellant became aware, or should have been aware of the causal connection sometime between 2004 and 2006.

As appellant knew or should have known of the connection between the work and his occupational disease while he was still employed, the time limitation begins to run on the date of the last exposure, or appellant's retirement date, October 10, 2006. However, he did not file his claim until August 24, 2010, more than three years after the date of the last exposure.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant's occupational disease claim was untimely filed.

¹³ The work description for the mail handler dictates that the employee needed to perform pushing, heavy lifting, pulling and constant use of fingers.

ORDER

IT IS HEREBY ORDERED THAT the January 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 9, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board