

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

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| V.W., Appellant                        | ) |                               |
|  | ) |                               |
| and                                    | ) | <b>Docket No. 12-832</b>      |
|  | ) | <b>Issued: August 8, 2012</b> |
| <b>DEPARTMENT OF VETERANS AFFAIRS,</b> | ) |                               |
| <b>ALEXANDRIA HEALTH CARE SYSTEM,</b>  | ) |                               |
| <b>Pineville, LA, Employer</b>         | ) |                               |
|  | ) |                               |

*Appearances:*

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On March 5, 2012 appellant, through his attorney, filed a timely appeal from a December 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant timely filed his claim for an occupational disease.

**FACTUAL HISTORY**

On March 21, 2011 appellant, then 49 years of age and a former social work associate and addiction therapist, filed a Form CA-2, an occupational disease claim. He alleged that he sustained bilateral carpal tunnel syndrome as a result of his past duties, namely typing, writing

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

and driving. Appellant became aware of his condition and its relationship to his employment on November 16, 2004.<sup>2</sup> He resigned effective December 22, 2006.

Appellant provided medical records for the period November 11, 2004 to January 4, 2006. In a November 16, 2004 progress note, Dr. Lelia Ruth F. Angel, an employing establishment physician and a Board-certified internist, diagnosed cervical and lumbar strains.<sup>3</sup>

The employing establishment's workers' compensation specialist submitted documents to OWCP on May 2, 2011. She stated that the employing establishment had no medical documentation regarding the claimed carpal tunnel syndrome and that she had no knowledge of appellant's claim.

OWCP informed appellant in a May 10, 2011 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit additional evidence. OWCP also requested that the employing establishment provide comments on the claim.

In a May 19, 2010 letter, the employing establishment's workers' compensation specialist stated that she answered the questions on appellant's occupational disease claim form because appellant's supervisor no longer worked for the employing establishment. She reiterated that she had no prior knowledge of the claim and also asserted that the claim was not timely filed. In a June 16, 2011 letter of controversion, the employing establishment contended that appellant did not file his occupational disease claim within three years of his resignation date.

By decision dated June 21, 2011, OWCP denied appellant's claim on the grounds that it was not timely filed.

Counsel requested a telephonic hearing, which was held on October 6, 2011. Appellant testified that he was diagnosed with bilateral carpal tunnel syndrome as early as December 2004, informed his supervisor and has since received medical treatment for the condition.<sup>4</sup>

On December 21, 2011 OWCP's hearing representative affirmed the June 21, 2011 decision.

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<sup>2</sup> Appellant previously filed a claim pertaining to a November 16, 2004 motor vehicle accident, which was accepted for peripheral vertigo, neck and lumbar sprains, and aggravation of cervical intervertebral disc disorder with myelopathy. However, his contention that he sustained carpal tunnel syndrome as a consequence of these accepted injuries was denied by OWCP. OWCP File No. xxxxxx684. This claim regarding the motor vehicle accident is not presently before the Board.

<sup>3</sup> The medical histories contained in these records referenced the November 16, 2004 employment incident. *See id.* Employing establishment health records also did not reference carpal tunnel syndrome that appellant attributed to his day-to-day job duties.

<sup>4</sup> A September 15, 2011 note from Dr. Stephen D. Rice, a Board-certified diagnostic radiologist, indicated that appellant received right C7 selective nerve root block.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

Section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>7</sup> In cases of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment.<sup>8</sup> If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employing establishment had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employing establishment on notice of a possible work-related injury or disease.<sup>9</sup>

## ANALYSIS

The case record shows that appellant resigned from his position on December 22, 2006. He subsequently filed an occupational disease claim for bilateral carpal tunnel syndrome on March 21, 2011, indicating in a Form CA-2 that he became aware of the condition and its relationship to his employment on November 16, 2004.<sup>10</sup>

The Board has held that the time for filing an occupational disease claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between the alleged condition and federal employment, even if he or she does not know the precise nature of the impairment or whether the ultimate result of such adverse effect would be temporary or permanent. Where the employee continues in the same employment after

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<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> 5 U.S.C. § 8122(a).

<sup>8</sup> 20 C.F.R. § 10.100(c) & 10.101(c). *See also* 5 U.S.C. § 8122(b).

<sup>9</sup> 20 C.F.R. § 10.100(b)(1). *See also* 5 U.S.C. § 8122(a).

<sup>10</sup> This appeal does not involve any allegations regarding injuries alleged in claim number xxxxxx684. *See supra* note 2.

such awareness, the limitations period begins to run on the date of his or her last exposure to the implicated factors.<sup>11</sup>

In this case, appellant stated that he initially became aware of his bilateral carpal tunnel syndrome on November 16, 2004. The limitations period commenced on December 22, 2006 because he continued to work for the employing establishment until this date. Nonetheless, appellant filed his occupational disease claim on March 21, 2011, more than four years after he resigned. In addition, while he alleged that he reported the condition to his supervisor in or around December 2004, the case record does not contain evidence demonstrating that an immediate superior either had actual knowledge of or received written or verbal notification about bilateral carpal tunnel syndrome and its relationship to appellant's work within 30 days of its occurrence.<sup>12</sup> Evidence from the employing establishment advised that appellant's supervisor no longer worked for the employing establishment and that it had no knowledge of the claimed condition.<sup>13</sup> Therefore, appellant did not file a timely claim.

Counsel contends on appeal that the December 21, 2011 decision is contrary to fact and law. The Board has already addressed the deficiencies of the claim. Appellant may submit new evidence or argument as part of a formal 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 did not establish that he sustained an occupational disease in the performance of duty.

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<sup>11</sup> *Larry E. Young*, 52 ECAB 264, 266 (2001).

<sup>12</sup> 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 was injured, but also knew or reasonably should have known that it was an on-the-job injury. *Duet Brinson*, 52 ECAB 168 (2000).

<sup>13</sup> Health records provided by the employing establishment also make no mention of the claimed work-related carpal tunnel syndrome that appellant attributed to his work duties. *See supra* note 3.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 21, 2011 decision of Office of Workers' Compensation Programs be affirmed.

Issued: August 8, 2012  
Washington, DC

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

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

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