

federal employment. He explained that welding, a task requiring constant repeated movement of the hand and wrist, had resulted in his condition. Appellant was suspended on March 13, 2007 due to his security clearance and removed from his position on June 8, 2007 for ineligibility to occupy a sensitive position. A supervisor indicated on the claim form that appellant first reported his claimed injury to the employing establishment on May 1, 2013.

On May 17, 2013 OWCP requested that appellant submit additional evidence to establish his claim. It noted that the evidence of record did not establish that he provided timely notification of his work injury, that he was a federal civilian employee, that he actually experienced the alleged employment factors, that he was diagnosed with any condition resulting from those factors, or that he was injured in the performance of duty. Appellant was afforded 30 days to submit the requested evidence. OWCP also requested that the employing establishment submit any factual and medical evidence regarding appellant's exposure to repetitive hand and wrist movements.

By letter dated May 23, 2012, Dr. Nestor Daniel Santacruz, a Board-certified internist, stated that appellant had a history of carpal tunnel syndrome, which was treated by steroid injection on June 14, 2006.

Appellant responded to OWCP's inquiries on May 26, 2013. He first began to notice symptoms of carpal tunnel syndrome, such as tingling and numbness, from 2005 through 2006. In 2006, he went to a physician, who informed him that he had carpal tunnel syndrome. Appellant stated that the next day, he went to a physician's office at the employing establishment, who corroborated the diagnosis of carpal tunnel syndrome and recommended that he file a claim. He stated that his hands stopped hurting, so he did not file a claim at that time. In 2011, the pain returned, making it difficult for appellant to sleep at night. Appellant was not currently a federal civilian employee, but his claim related to an injury alleged to have occurred during his tenure as a federal employee. He explained that he had worked at the employing establishment for 20 years, and that the constant repeated movement of welding had caused his injury. Appellant did not file a claim in a timely manner because he did not know he could file a claim until 2012. He had been suspended from the employing establishment without an opportunity to "clear out the medical department." Appellant asserted that, while his claim was untimely, he felt that the employing establishment should be held accountable for his injury.

The employing establishment submitted forms dated March 13 and June 8, 2007. Appellant had been suspended pending his security clearance and then dismissed when he was found ineligible to occupy a sensitive position.

By letter dated July 3, 2013, Dr. David E. Lannik, a Board-certified orthopedic surgeon, diagnosed appellant with right carpal tunnel syndrome. He had initially evaluated appellant on June 1, 2012, and that a diagnostic study had confirmed the diagnosis on December 17, 2012. Dr. Lannik stated that as a welder, appellant had long-term chronic direct pressure to the palms of his hands, resulting in the compression of the median nerves consistent with bilateral carpal tunnel syndrome. Appellant's left carpal tunnel syndrome was the most severely symptomatic and was treated.

In an August 21, 2013 decision, OWCP denied appellant's claim for right carpal tunnel syndrome as untimely filed. It found that his claim was not timely filed within three years of the date of injury or that his immediate supervisor had actual knowledge within 30 days of the date of injury. OWCP found that the date of appellant's injury was April 5, 2005 and that his claim for compensation was not filed until May 5, 2013.

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 FECA 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.³

For actual knowledge of a supervisor to be regarded as timely filed, 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.⁴

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, 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.⁵

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 or her 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 or her 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.⁶ 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

² *Charles Walker*, 55 ECAB 238, 239 (2004); see *Charles W. Bishop*, 6 ECAB 571, 571 (1954).

³ 5 U.S.C. § 8122(a).

⁴ *Delmont L. Thompson*, 51 ECAB 155, 156 (1999).

⁵ 5 U.S.C. § 8119(b); *Delmont L. Thompson*, *supra* note 4. *Id.* at § 8122(b); see *Luther Williams, Jr.*, 52 ECAB 360, 361 (2001).

⁶ *Larry E. Young*, 52 ECAB 264 (2001).

employment, the time limitation begins to run on the date of the last exposure to the implicated factors.⁷ The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.⁸

The time limitations in section 8122(a) and (b) do not: (1) begin to run against a minor until he reaches 21 years of age or has had a legal representative appointed; (2) run against an incompetent individual while he is incompetent and has no duly appointed legal representative; or (3) 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.⁹

ANALYSIS

The Board finds that appellant has not established that his right carpal tunnel syndrome claim was filed in a timely manner.

On May 16, 2013 appellant filed an occupational disease claim alleging right carpal tunnel syndrome due to factors of his federal employment. He stated that he first became aware of the condition's relationship to his employment on March 20, 2006 and continued working at the employing establishment until his suspension on March 13, 2007. Since appellant continued to be exposed to the alleged employment factors after he learned of the condition and the relationship to his employment, the time limitation for filing the claim began to run on the date of his last exposure on March 13, 2007.¹⁰ Appellant had three years from March 13, 2007 to timely file his claim. As his claim was not filed until May 16, 2013, the Board finds that it was not timely filed within the three-year period of limitation.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate supervisor had actual knowledge of the injury or if he provided written notice within 30 days of his last exposure to the employment factors alleged to have caused or aggravated his injury, *i.e.*, within 30 days of March 13, 2007.¹¹ The record does not reflect that appellant provided written notice of injury prior to filing the instant claim, and a supervisor advised that the employing establishment had not received notice of appellant's injury until May 1, 2013. While appellant states that he sought treatment at the employing establishment in 2006 for the alleged condition, he has not submitted any evidence to corroborate this allegation.¹² The Board finds, therefore, that appellant did not establish that the employing establishment had knowledge of his right carpal tunnel syndrome within 30 days of his last exposure in 2007.

⁷ *Id.*

⁸ *Debra Young Bruce*, 52 ECAB 315, 317 (2001).

⁹ 5 U.S.C. § 8122(d).

¹⁰ *See Larry E. Young*, *supra* note 6.

¹¹ *See* 5 U.S.C. § 8122(a)(1); *Ralph L. Dill*, 57 ECAB 248, 251 (2005).

¹² *See B.C.*, Docket No. 09-2174 (issued July 16, 2010).

Appellant contended that he did not know he could file a claim for right carpal tunnel syndrome until 2012. The Board has held that an employee's unawareness of possible entitlement, lack of access to information, or ignorance of the law or one's rights and obligations under it, do not constitute exceptional circumstances that excuse a failure to file a timely claim.¹³ Appellant was not under 21 years old and provided no evidence to demonstrate that he was incompetent or was prevented from giving notice by exceptional circumstances. Thus, he did not file a timely claim for compensation.

CONCLUSION

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA.

ORDER

IT IS HEREBY ORDERED THAT the August 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

¹³ *B.J.*, 59 ECAB 660, 664 (2008).