United States Department of Labor
Employees' Compensation Appeals Board

A.T., Appellant	)	
and	)	**Docket No. 13-611**
	)	**Issued: March 5, 2014**
U.S. POSTAL SERVICE, POST OFFICE, White Plains, NY, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 21, 2012 appellant filed a timely appeal from August 7 and December 21, 2012 merit decisions of the Office of Workers' Compensation Programs denying his claim for compensation as untimely filed. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant filed a timely claim for compensation for carpal tunnel syndrome under FECA.

On appeal, appellant contends that his claim was timely filed and that his supervisor had notice of the injury.

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant timely requested an oral argument, which the Board denied by a March 15, 2013 order. *See Order Denying Request for Oral Argument,* Docket No. 13-611 (issued March 15, 2013).

FACTUAL HISTORY

On May 9, 2012 OWCP received appellant's claim for an occupational disease. Appellant alleged that he worked as a mail carrier and that as a result of carrying and handling mail during his federal employment, he was originally diagnosed with a neck and shoulder injury, but recently he discovered that his hand had also been injured. He listed his date of awareness as November 8, 2007. Appellant's signature on the form is dated June 13, 2011. A representative from the employing establishment signed the form on May 8, 2012. The representative indicated that appellant had been terminated on January 3, 2008.

In a statement dated April 18, 2012, appellant indicated that he was injured on the job on November 8, 2007. He stated that he previously filed a claim for compensation.[3] Appellant stated that his carpal tunnel disease resulted from carrying mail in all types of weather and the wear and tear on his body. He also submitted a document indicating that an item was processed by sort facility on August 17, 2011 and delivered to Bronxville, NY on August 18, 2011. Appellant indicated that the document sent on this date was the Form CA-2 he sent to the employing establishment. In another statement dated April 2012, he stated that his injury date for carpal tunnel syndrome was September 2004 to November 8, 2007. Appellant submitted numerous other statements listing his date of injury as November 8, 2007.

In a letter dated May 4, 2012, the employing establishment controverted appellant's claim on numerous bases, including that the claim was not timely filed. It noted that he is requesting a signature dated back to 2011. The representative stated that the employing establishment cannot prove the contents of appellant's mailing which he cites with a delivery confirmation receipt, but that the employing establishment has agreed to allow the back date of this form in good faith. However, the employing establishment alleged that the claim was still not timely filed within three years. It also noted that the medical evidence that begins to address carpal tunnel syndrome becomes evident in 2009 at which point appellant was no longer employed by the employing establishment. The employing establishment also stated that appellant was terminated on January 3, 2008 for failure to disclose information on his application for hire on September 18, 2004.

By letter dated June 4, 2012, OWCP asked appellant for further information. One of the items requested was evidence to support that he provided timely notification of his work injury.

Appellant submitted multiple statements in support of his claim, including the following noted statements. In a March 4, 2012 note, he indicated that history of first condition was November 8, 2007 and that he took a test in 2009 that first stated that he had carpal tunnel syndrome. Appellant further noted that his body, wrist and hands hurt while working but that he never complained and did not take a test until 2009. In a June 17, 2012 letter, he indicated that he filed a claim when he became injured on November 8, 2007. Appellant also noted that he had an electromyogram/nerve conduction velocity test on September 25, 2009 and that he realized at that time that he had carpal tunnel syndrome based on the November 8, 2007 employment

[3] In OWCP File No. xxxxxx029, appellant filed an occupational disease claim. He listed his date of awareness as November 8, 2007. OWCP accepted appellant's claim for thoracolumbar strain and bilateral shoulder impingement. On June 24, 2009 it terminated his compensation and medical benefits.

injuries. He also noted that in pursuing his claim for back and neck injuries, he told the impartial medical examiner and his physician about the numbness, but they overlooked his complaints. In a June 20, 2012 letter, appellant stated that he filed a Form CA-1 on November 15, 2007 and that this claim was accepted on October 9, 2008 for thoracolumbar strain and bilateral shoulder impingement. In a July 27, 2012 letter, he indicated that he was injured and worked with carpal tunnel syndrome, but did not know until doctors took test of nerves that resulted in repetitive wrist movement. Appellant further indicated that he did his mail carrier job until his body could not take the pain anymore, that he has been in pain every day since November 8, 2007. He specifically noted that in addition to the pain in his back, neck and shoulders, he had tingling and numbness in his wrists, hands and arm every day since November 8, 2007. Appellant stated that a previous claim for benefits was accepted in October 2008 and that he was wrongfully terminated in March 2009. In a November 12, 2012 letter, he stated that he filed his claim by submitting a Form CA-2 on May 16, 2008.

A September 25, 2009 nerve conduction study was submitted which was interpreted by Dr. Stephen Andrus, a physician Board-certified in pain medicine and physical medicine and rehabilitation, as evincing definitive electrophysiological evidence of multilevel bilateral cervical radiculopathy with involvement of the C5, C6 and C7 nerve roots; moderate right carpal tunnel syndrome; mild left carpal tunnel syndrome and mild bilateral ulnar neuropathy at the elbow, as evidenced by slowing of the ulnar motor nerve across the ulnar groove bilaterally.

By decision dated August 7, 2012, OWCP denied appellant's claim. It noted that he indicated that he sustained a medical condition on November 8, 2007 yet failed to file a claim until June 13, 2011, over three years later. OWCP indicated that it had asked appellant several questions to clarify when he became aware of a possible relationship between the claimed carpal tunnel condition and his federal employment, but none of his statements supported that he filed his claim within three years of the date of injury.

On September 29, 2012 appellant requested reconsideration. In a December 13, 2012 letter, he stated, *inter alia,* that his claim for compensation was filed within three years of his injury. Appellant further contended that his immediate supervisor had actual knowledge of his injury within 30 days and that written notice was given within 30 days. He noted that he filed a claim for an injury to his back on November 16, 2007 and contends that this placed his supervisor on notice that he was injured. Appellant also referenced various medical reports that he alleged showed pain in his neck and back.

By decision dated December 21, 2012, OWCP affirmed the August 7, 2012 decision denying his claim as it was not timely filed.

LEGAL PRECEDENT

Under FECA, as amended in 1974, a claimant has three years to file a claim for compensation.[4] In occupational disease claims, the Board has held that the time for filing a claim begins to run when the employee first becomes aware or reasonably should have been

[4] *Duet Brinson*, 52 ECAB 168 (2000); *William F. Dorson*, 47 ECAB 253, 257 (1995); *see also* 20 C.F.R. 10.101(b).

aware of a possible relationship between the condition and his or her employment.[5] 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 limitations 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]

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 his or her employment and compensable disability.[7] Where the employee continues in the same employment after such awareness, the time limitation begins to run on the date of last exposure to the implicated factors.[8] The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.[9]

Compensation for disability or death may still be allowed even if a claim is not filed within the three-year time frame if appellant can show that: (1) his or her immediate supervisor had actual knowledge of his or her alleged employment-related injury within 30 days such that the immediate supervisor was put reasonably on notice of an on-the-job injury; or (2) death or written notice of injury or death as specified in section 8119 was given within 30 days.[10] 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 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 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 notice.[11] The Board has held that actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.[12] For actual knowledge of a supervisor to be regarded as timely filing, an employee must show not only that the immediate supervisor knew that he or she was injured, but also knew or reasonably should have known that it was an on-the-job injury.[13]

[5] *See William C. Oakley*, 56 ECAB 519 (2005).

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

[7] 5 U.S.C. § 8112(b); *see also Bennie L. McDonald*, 49 ECAB 509, 514 (1998).

[8] *Id., see also William D. Goldsberry*, 32 ECAB 536, 540 (1981).

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

[10] 5 U.S.C. § 8112(a).

[11] *Id.* at § 8119.

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

[13] *K.M.*, Docket No.12-762 (issued January 14, 2013); *Delmont L. Thompson*, 51 ECAB 155 (1999).

ANALYSIS

Appellant signed his claim form on June 13, 2011 and alleged that he mailed this document on August 17, 2011, a fact that finds some support in a document indicating that a piece of mail was processed by the sort facility on that date. Although the employing establishment did not submit the form until May 8, 2012, the employing establishment does not contest that his date of filing was June 13, 2011. However, it contends that as appellant lists his date of awareness as November 8, 2007, his claim was not filed within three years of the date of awareness of his carpal tunnel syndrome injury. The employing establishment also noted that he was terminated from his employment on January 3, 2008.

The Board finds that appellant's claim was not timely filed. In latent disability claims, a claimant must establish that he or she filed his or her claim within three years of the date that a claimant is aware or by the exercise of reasonable diligence, should have been aware of the causal relationship between his or her employment and the compensable disability.[14] When a claimant continues in the same employment after such awareness, the time limitation begins to run on the date of last exposure to the implicated factors.[15] In a March 4, 2012 letter, appellant indicated that he noticed that his right and left hand went numb and that he had tingling and that his wrist and his left hand got stiff. He noted a date of injury on November 8, 2007. Appellant indicated that his body and wrist and hands hurt while working but that he never complained and did not take a test until 2009. In a June 17, 2012 letter, he indicated that he had been working with carpal tunnel and did not understand it until the doctors took a test and told him that his job caused it. Appellant indicated that he told his physician about the numbness, just like he told the impartial medical examiner, that he was accepted in October 2008 and told the impartial medical examiner at that time that he was in pain and numbness but that the physician overlooked it. In a July 27, 2012 letter, he indicated that he did his mail carrier job until his body could not take the pain anymore and that he had been in pain every day since November 8, 2007. Appellant specifically noted that he was in pain in his back, neck and shoulders and had tingling and numbness in his wrist, hands and arms. The Board finds that his statements suggest that he knew or should have know about the carpal tunnel syndrome symptoms as early as November 8, 2007, as he noted that he was in pain, including tingling and numbness in his wrists, hands and arms, every day since November 8, 2007. The employing establishment terminated appellant on January 3, 2008 and it is clear that he knew of his carpal tunnel syndrome symptoms and should have known of the relationship to his employment by that time. This is especially the case as he had also been developing a claim for cervical and lumbar strain at the same time these conditions were present. Appellant suggests that he was not fully aware of his diagnosis for carpal tunnel syndrome and its relationship to his employment until he received the results of the September 25, 2009 nerve conduction study by Dr. Andrus. However, the Board has held that the applicable statute of limitations commences to run even if the employee does not know the precise nature of the impairment.[16] Accordingly, the Board finds that appellant knew or should have known that the tingling and numbness in his wrist, hands and arms was related to his

[14] *See T.M.*, Docket No. 13-1310 (issued January 2, 2014).

[15] *M.L.*, Docket No. 13-107 (issued October 21, 2013).

[16] *Delmont L. Thompson*, 51 ECAB 155 (1999).

employment at least by his last day of employment on January 3, 2008. As appellant did not file his claim until June 13, 2011, over three years subsequent to that date, his claim was not timely filed.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate superior had actual knowledge of the injury within 30 days or under section 8122(a)(2) if the written notice of injury was given to his immediate superior within 30 days as specified in section 8119.[17] He has not established either that his supervisor had actual knowledge or written notice of his injury within 30 days. Appellant contends that his supervisor had knowledge of his injury as the employing establishment acknowledged that he filed a claim for back injuries on November 8, 2007. However, the fact that his supervisor was aware of back or neck injuries does not show that his supervisor was aware of carpal tunnel syndrome or that appellant was aware of any relationship between his carpal tunnel syndrome and his employment within 30 days of the injury.

Appellant did not establish that he filed his claim within three years of his last date of employment with the employing establishment, nor has he established that his supervisor had actual knowledge of his carpal tunnel syndrome within 30 days of the date of injury. Therefore, the Board finds that his claim was not timely filed within the three-year time limitation under section 8122 of FECA.

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. §§ 10.604 through 10.607.

CONCLUSION

The Board finds that appellant did not file a timely claim for compensation for carpal tunnel syndrome under FECA.

[17] *G.A.*, Docket No. 13-750 (issued June 25, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 21 and August 7, 2012 are affirmed.

Issued: March 5, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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