

delayed in submitting his claim due to the many representatives and claims examiners he dealt with in processing his claim.

FACTUAL HISTORY

On June 18, 2013 appellant, then a 64-year-old former food inspector, signed an occupational disease claim (Form CA-2) alleging that on January 1, 1990 he first became aware of his bilateral carpal tunnel syndrome and realized that it was caused or aggravated by duties of his federal employment.² He explained that daily use of his hands in 40 years of employment had resulted in his condition. Appellant explained that he had not filed notice with his employing establishment within 30 days after January 1, 1990 because he had waited until retirement. A supervisor indicated that appellant had voluntarily retired on June 3, 2010.

In support of his claim, appellant submitted a diagnostic report from Dr. David K. Kaufman, a Board-certified neurologist; Dr. Robert C. Mead, Board-certified in family medicine; and Dr. David N. Heverly, a Board-certified neurologist. He also submitted a position description.

On September 24, 2013 appellant filed a claim for a schedule award.

On October 16, 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 actually experienced the alleged employment factors, that he was injured in the performance of duty or that his injury was caused or aggravated by duties of his federal employment. Appellant was afforded 30 days to submit the requested evidence.

By letter dated October 29, 2013, appellant responded to OWCP's inquiries. With regard to the issue of the timeliness of his claim, appellant noted that he had first noticed his carpal tunnel syndrome on January 11, 2007, and that his symptoms had continued since that time. He submitted a medical report dated October 28, 2013 from Dr. David Toivonen, a Board-certified orthopedist.

In a December 4, 2013 decision, OWCP denied appellant's claim for bilateral carpal tunnel syndrome as untimely filed. It found that his claim was not timely filed within three years of the date of injury and that his immediate supervisor did not have actual knowledge within 30 days of the date of injury. OWCP found that the date of appellant's injury was January 1, 1990 and that his claim for compensation was not filed until September 12, 2013.

Appellant requested reconsideration of the December 4, 2013 decision on March 4, 2014. In support of his request, he submitted medical reports from Dr. Toivonen and several diagnostic reports. Appellant also requested authorization for surgery.

By decision dated March 27, 2014, OWCP declined appellant's request for reconsideration. It stated that he had not raised any substantive legal questions or included new

² Appellant signed his Form CA-2 on June 18, 2013, but the form was not signed by a supervisor or submitted to OWCP until September 12, 2013.

and relevant evidence. OWCP noted that he had retired on June 3, 2010, and that he had filed his claim for compensation, more than three years after he was last exposed to employment factors.

LEGAL PRECEDENT -- ISSUE 1

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.³ 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.⁴

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.⁵

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.⁶

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 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.⁷ Where the employee continues in the same employment after he reasonably should have been aware that he 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.⁸ The

³ *Charles Walker*, 55 ECAB 238, 239 (2004); see *Charles W. Bishop*, 6 ECAB 571, 571 (1954).

⁴ 5 U.S.C. § 8122(a).

⁵ *Delmont L. Thompson*, 51 ECAB 155, 156 (1999).

⁶ 5 U.S.C. § 8122(b); see *Luther Williams, Jr.*, 52 ECAB 360, 361 (2001).

⁷ *Larry E. Young*, 52 ECAB 264 (2001).

⁸ *Id.*

requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.⁹

ANALYSIS -- ISSUE 1

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

On June 18, 2013 appellant signed a Form CA-2, occupational disease claim, which was forwarded to OWCP on September 12, 2013, alleging bilateral 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 January 1, 1990 and continued working at the employing establishment until his voluntary retirement on June 3, 2010. This is therefore not a case of latent disability. As appellant continued to be exposed to the alleged employment factors after he learned of the condition and its relationship to his employment, the time limitation for filing the claim began to run on the date of his last exposure on June 3, 2010.¹⁰ As his claim was not filed by June 3, 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 June 3, 2010.¹¹ The record does not reflect that appellant provided written notice of injury prior to filing the instant claim, or that a supervisor had actual knowledge of his injury within 30 days of June 3, 2010. The Board therefore finds that appellant did not establish that a supervisor had knowledge of his bilateral carpal tunnel syndrome within 30 days of his last exposure in 2010.

On appeal, appellant claims that he had provided knowledge of his carpal tunnel syndrome to Drs. Desanta and Trudeau, who were IIC at sites operated by the employing establishment. However, he did not provide any evidence to support this assertion.¹² Appellant further argues that he had been delayed in submitting his claim due to the many representatives and claims examiners he dealt with in processing his claim. However, the Board notes that the only parties necessary for the submission of a claim for compensation are the claimant and a supervisor, delays after the initial submission of his claim would not be relevant to the issue of whether that initial submission was timely.¹³ Thus, his claim for compensation is barred by the applicable time limitation provisions of FECA.

⁹ *Debra Young Bruce*, 52 ECAB 315, 317 (2001).

¹⁰ *See Larry E. Young*, *supra* note 7.

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).

¹³ *See supra* note 12.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a), OWCP's regulations provide that the evidence or argument submitted by a claimant must: (1) show that OWCP erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by OWCP; or (3) constitute relevant and pertinent new evidence not previously considered by OWCP.¹⁴ Section 10.608(b) of OWCP's regulations provide that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review on the merits.¹⁵

The Board has found that evidence that repeats or duplicates evidence already in the case record has no evidentiary value.¹⁶ The Board also has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷ While the reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.¹⁸

ANALYSIS -- ISSUE 2

OWCP issued a December 4, 2013 decision denying appellant's claim for compensation as untimely filed. On March 4, 2014 appellant requested reconsideration of this decision. OWCP declined appellant's request by decision dated March 27, 2014.

The issue presented on appeal is whether appellant met any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim. In his March 4, 2014 request for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

The relevant issue upon reconsideration was whether appellant had timely filed his claim for compensation. Appellant did not submit any new and relevant evidence on that issue. He submitted reports from Dr. Toivonen, several diagnostic reports and requested authorization for surgery. While this evidence was not previously of record, it is irrelevant to the grounds upon which OWCP denied his claim. Appellant's claim was denied because OWCP found that it had been untimely filed. The medical reports submitted do not establish that appellant's claim was

¹⁴ 20 C.F.R. § 10.606(b)(3); *D.K.*, 59 ECAB 141, 146 (2007).

¹⁵ *Id.* at § 10.608(b); *K.H.*, 59 ECAB 495, 499 (2008).

¹⁶ *See Daniel Deparini*, 44 ECAB 657, 659 (1993).

¹⁷ *P.C.*, 58 ECAB 405, 412 (2007); *Ronald A. Eldridge*, 53 ECAB 218, 222 (2001); *Alan G. Williams*, 52 ECAB 180, 187 (2000).

¹⁸ *Vincent Holmes*, 53 ECAB 468, 472 (2002); *Robert P. Mitchell*, 52 ECAB 116, 119 (2000).

timely filed within three years of the date of last exposure, that his immediate supervisor had actual knowledge of the injury, or that he provided written notice within 30 days of his last exposure to the employment factors alleged to have caused or aggravated his injury. Similarly, appellant's request for authorization for surgery is not relevant to the grounds upon which OWCP denied his claim. The Board accordingly finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered. Pursuant to 20 C.F.R. § 10.608(b), OWCP properly denied merit review.

CONCLUSION

The Board finds that appellant's claim is barred by the applicable time limitation provisions of FECA. The Board further finds that OWCP properly denied appellant's request for review of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 27, 2014 and December 4, 2013 are affirmed.

Issued: September 10, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board