

machinery in the performance of her federal job duties. She indicated that she first became aware of her condition in 2009 and first realized that her condition was caused by her employment in 2009. Appellant reported working on automated machinery her entire 26-year career and alleged that the machines were loud and that dropped equipment was loud. She stated that her loss of hearing was gradual over a long period of time and that she was currently experiencing difficulty hearing when others spoke to her. On the reverse of the form, appellant's supervisor contended that appellant continued to work and that she first reported her condition on August 14, 2014.

Appellant submitted a report dated March 27, 2014 from Dr. Maximillian S. Newell, a Board-certified otolaryngologist. Dr. Newell noted that appellant reported gradual hearing loss with intermittent tinnitus. He reported that appellant had worked in a high noise environment for years. Dr. Newell examined appellant's audiogram and diagnosed mild asymmetrical high-frequency loss. On May 16 and July 18, 2014 he repeated his diagnosis. Dr. Newell opined, "She has been in the high noise environment for years and this could be a contributing factor. She states her left ear was closer to the noise source than her right ear."

In a letter dated August 25, 2014, OWCP requested additional factual and medical information from appellant including evidence that she timely provided notification of her work injury, that she actually experienced the work factors alleged, and that she was injured while performing her federal job duties. It allowed 30 days for a response.

On August 21, 2014 the employing establishment provided noise survey information dated August 2014. It reviewed this survey and noted that all of the readings were below 85 decibels. The employing establishment stated that appellant worked on a Delivery Bar Code Sorting Machine (DBCS) which had numerous electric motors as well as small plastic gates. It further described the nearby sounds of electric forklifts and industrial towing vehicles with warning beepers. The employing establishment stated that appellant was exposed to DBCS machine noise for five hours a day six days a week and that soft earplugs were available. It reported that she continued to experience the described noise exposures.

Appellant responded to OWCP and stated that she was still exposed to hazardous noise at work. She described working for eight hours a day on loud machinery with no hearing protection. Appellant indicated that she worked in a warehouse setting with several machines in the same area running at the same time. She asserted that her hearing loss had a gradual onset and that she did not realize she was losing her hearing until six months ago. Appellant stated, "This is why I waited to until now to file my claim, I just did not know what was going on with me."

By decision dated February 9, 2015, OWCP denied appellant's claim finding that it was untimely filed. It found that she filed her claim on July 28, 2014 for an occupational disease which she was aware of on January 1, 2009. OWCP found that appellant's claim was not filed within the three-year time limitation period and that there was no evidence that her immediate supervisor was reasonably on notice of her injury.

LEGAL PRECEDENT

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.² 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 the employment and the compensable disability.³ The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.⁴ Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁶ The Board has indicated that an employee need only be aware of a possible relationship between his or her condition and his or her employment to commence the running of the applicable statute of limitations.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 her condition and her 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.⁸ Where the employee continues in the same employment after she reasonably should have been aware that 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.⁹

ANALYSIS

The Board finds that appellant has established that she filed a timely claim for compensation under the three-year time limitation of section 8122 of FECA.

² 5 U.S.C. § 8122(a).

³ *Id.* at § 8122(b).

⁴ See *Linda J. Reeves*, 48 ECAB 373 (1997).

⁵ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); see also *Larry E. Young*, 52 ECAB 264 (2001).

⁶ *Willis E. Bailey*, 49 ECAB 511 (1998); *B.H.*, Docket No. 15-0970 (issued August 17, 2015).

⁷ *Edward C. Hornor*, 43 ECAB 834, 840 (1992).

⁸ *Larry E. Young*, *supra* note 5.

⁹ *Id.*

In her notice of occupational disease claim (Form CA-2), appellant advised that she first became aware of her hearing loss and its relation to her federal employment in 2009. Although she did not file her claim or give notice to her supervisor until five years later, she continued her work as a postal clerk. Appellant claimed that she was exposed to loud machinery in the performance of her duties. The employing establishment supported that she continued to be exposed to noises from the DBCS machine as well as forklifts and industrial towing vehicles. As noted, the Board has held that, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.¹⁰

Because appellant did file a timely claim for compensation while still exposed to loud working conditions, the case is remanded to OWCP to further develop and adjudicate the claim. Following this and any other development that it deems necessary, OWCP shall issue a *de novo* decision in the case.

CONCLUSION

The Board finds that appellant filed a timely occupational disease claim for compensation under 5 U.S.C. § 8122(a).

¹⁰ *B.H.*, Docket No. 15-0970 (issued August 17, 2015).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2015 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for further development consistent with this decision.

Issued: November 5, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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