

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

S.W., Appellant

and

**DEPARTMENT OF THE ARMY, MARTIN
ARMY HOSPITAL, Fort Benning, GA, Employer**

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**Docket No. 16-0219
Issued: April 5, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 16, 2015 appellant filed a timely appeal of a May 18, 2015 merit decision and a July 10, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP properly denied appellant's occupational disease claim as a duplicate untimely claim under 5 U.S.C. § 8122; and (2) whether OWCP properly refused to reopen appellant's claim for further merit review under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 48-year-old worker in the "mother baby unit" filed a claim for occupational disease (Form CA-2) on March 26, 2015, alleging that she developed a left shoulder condition

¹ 5 U.S.C. § 8101 *et seq.*

causally related to factors of her federal employment. She advised that her condition developed over time as a result of lifting boxes. Appellant asserted that she first became aware that she had sustained a left shoulder condition on January 6, 2011. She also noted that she had filed a previous claim when the injury occurred, but at that time her shoulder was not bothering her “real bad,” therefore her claim was closed. Appellant explained that she had not appealed the denial of her previous claim because she was sick at that time.²

By letter dated April 7, 2015, OWCP advised appellant to submit additional factual and medical evidence in support of her claim. It afforded appellant 30 days to submit the requested information.

In a letter dated May 10, 2015, appellant asserted that she retired from the employing establishment in July 2011. She again related that her left shoulder condition developed as a result of lifting heavy boxes weighing 15 to 25 pounds. Appellant explained that the date of injury was December 17, 2003, the date her left shoulder bursitis and impingement was diagnosed.

OWCP received a number of medical reports pertaining to treatment of appellant’s left shoulder dating from December 17, 2003 through January 30, 2015. In the initial December 17, 2003 report, Dr. Brian E. Kozar, Board-certified in orthopedic surgery, noted appellant’s history of lifting and mopping at work, and diagnosed left shoulder bursitis and impingement. In a January 30, 2015 report Dr. Champ Baker, Board-certified in orthopedic surgery, again related his treatment of appellant’s left shoulder for the conditions of disorder of the bursae, and left shoulder impingement.

By decision dated May 18, 2015, OWCP denied appellant’s claim, finding that she failed to file a timely claim within the requisite three years under section 8122. It noted that the date of injury was January 6, 2011, that she asserted that she retired from the employing establishment in July 2011, and that she filed her claim for compensation on March 26, 2015. OWCP further stated that there was no evidence that her immediate supervisor had actual knowledge within 30 days of the date of injury. It further noted, however, that appellant filed a prior claim for occupational disease (Form CA-2) on June 15, 2012, under claim number xxxxxx948 for a left shoulder injury. It advised that the claim was denied and appellant had exercised her appeal rights. OWCP found that the instant claim under xxxxxx318 comprised the exact same workplace events, when she filed claim number xxxxxx948. It therefore found that the instant claim was a duplicate claim.

On June 8, 2015 OWCP received appellant’s letter dated May 25, 2015 wherein she requested reconsideration. Appellant asserted that her left shoulder condition developed due to years of repetitive work and wear and tear entailed by her duties as a housekeeper with the employing establishment. She related that these duties including performing heavy duty housekeeping such as mopping, dusting and buffing the floors, pulling trash, and cleaning and wiping down the rooms. Appellant also noted that she did not understand why OWCP changed her file number.

² Appellant had an accepted traumatic injury claim for a left shoulder condition due to mopping on November 13, 2003, OWCP file number xxxxxx140. She also had filed a previous occupational disease claim on June 15, 2012 under file number xxxxxx948 for left shoulder injury. The June 15, 2012 claim was denied on August 24, 2012.

By decision dated July 10, 2015, OWCP denied appellant's application for review because it neither raised substantive legal questions nor included new and relevant evidence sufficient to require OWCP to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of FECA³ provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.⁴ 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.⁵ 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.⁶ Even if a claim was untimely 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 8119.⁷ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁸ The Board has indicated that an employee need only be aware of a possible relationship between her condition and her employment to commence the running of the applicable statute of limitations.⁹

OWCP's procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.¹⁰

ANALYSIS -- ISSUE 1

Appellant filed this occupational disease claim on March 26, 2015. She asserted that she first became aware of her left shoulder condition and its relationship to her federal employment on January 6, 2011 and that she retired from the employing establishment in July 2011. The time for filing this occupational disease claim thus began to run in July 2011, the date of appellant's

³ 5 U.S.C. § 8122.

⁴ *Id.* at 8122(a).

⁵ *Id.* at 8122(b).

⁶ See *Linda J. Reeves*, 48 ECAB 373 (1997).

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

⁸ *Willis E. Bailey*, 49 ECAB 509 (1998).

⁹ *Edward C. Horner*, 43 ECAB 834 (1992).

¹⁰ See Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Duplicate Cases*, Chapter 1.400.7 (February 2000); see also *W.M.*, Docket No. 09-1609 (issued April 5, 2010).

last exposure to the work factors alleged to have caused her condition. As appellant did not file the current claim within three years of July 2011, it was untimely filed.¹¹

A claim would still be regarded as timely under section 8122(a)(1) if the immediate supervisor had actual knowledge within 30 days. Appellant has not submitted any evidence to establish that her supervisor was advised of her alleged left shoulder occupational injury within 30 days of her retirement in July 2011.

OWCP noted appellant's prior June 15, 2012 claim for occupational disease, under file number xxxxxx948 for a left shoulder injury, and that the instant claim under xxxxxx318 was comprised of the exact same workplace events that she had claimed under file number xxxxxx948. The current claim is an improper duplicate claim. In *T.M.*,¹² the same issues were presented to the Board. Those issues were whether a claim was timely filed and whether the claim was a duplicate claim. The Board explained that a claim is duplicative of a previous claim, if the employee did not assert that the injury occurred from any new employment factors beyond those considered in the denial of the previous claim. The Board further explained that OWCP procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.

Consequently, in the present case, as appellant had not alleged any new work factors or exposure after her retirement in July 2011, OWCP properly determined that her March 26, 2015 claim was untimely filed and was a duplicate claim of her June 15, 2012 claim.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,¹³ OWCP's regulations provides that 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 To be entitled to a merit review of an OWCP decision denying or terminating a benefit, a claimant's application for review must be received within one year of the date of that decision.¹⁵ When a claimant fails to meet one of the above standards, OWCP will deny the application for reconsideration without reopening the case for review on the merits.¹⁶

¹¹ See *T.M.*, Docket No. 13-1310 (issued January 2, 2014).

¹² *Id.*

¹³ 5 U.S.C. § 8128(a).

¹⁴ 20 C.F.R. § 10.606(b)(3).

¹⁵ *Id.* at § 10.607(a).

¹⁶ *Id.* at § 10.608(b).

ANALYSIS -- ISSUE 2

The underlying issue on reconsideration is whether appellant submitted sufficient evidence to establish that she timely filed a new occupational disease claim. On June 8, 2015 OWCP received her request for reconsideration of the May 18, 2015 merit decision. Appellant's request is, therefore, timely. The question that remains is whether the request meets at least one of the three standards for obtaining a merit review.

The Board finds that appellant's request for reconsideration is insufficient to require OWCP to reopen the case for merit review. Appellant reiterated her allegations as to how her alleged left shoulder injury occurred. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁷ Appellant did not attempt to show that OWCP erroneously applied or interpreted a point of law or advance a relevant argument not previously considered by OWCP. Further, she did not submit pertinent new and relevant evidence not previously considered.

While appellant also questioned why OWCP had assigned this claim a new claim number, this procedure was followed because appellant filed a new claim for occupational disease (Form CA-2) on March 26, 2015. As previously explained this was a duplicate claim. Thus this second claim file should not have been opened. The Board therefore finds that OWCP properly denied her request for further merit review under section 8128(a).

CONCLUSION

The Board finds that appellant's occupational disease claim was untimely filed within the applicable time limitation provisions of FECA and was a duplicate claim. OWCP properly refused to reopen appellant's claim for further merit review under section 8128(a).

¹⁷ See *J.P.*, 58 ECAB 289 (2007); *Richard Yadron*, 57 ECAB 207 (2005).

ORDER

IT IS HEREBY ORDERED THAT the July 10 and May 18, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2016
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board