



condition and that on January 25, 2016 he first realized that his condition was aggravated by excessive typing and repetitive motion procedures at work. Appellant explained that, from November 2015 to January 2016, more patients than usual were scheduled for appointments and that this necessitated excessive typing and repetitive motion procedures that aggravated his condition. The reverse of the claim form indicated that he had reported the condition to his supervisor on January 25, 2016 and that he was last exposed to conditions alleged to have caused his disease or illness on February 5, 2016.

In a February 18, 2016 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional medical and factual evidence. It also requested that the employing establishment respond to his contentions.

In a February 22, 2011 medical report, Dr. William J. Triggs, a Board-certified neurologist, advised that a motor nerve conduction study was abnormal with electrophysiological evidence of left carpal tunnel syndrome and borderline right carpal tunnel syndrome.

Medical reports and a prescription dated March 1, 2011 and January 6 to 25, 2016 from Dr. James D. Bass, a Board-certified family practitioner, Dr. John M. Redmond and Dr. Peter M. Murray, Board-certified orthopedic surgeons, Dr. Kathleen E. Carey and Dr. Thomas H. Berquist, Board-certified radiologists, and Dr. Julia Whitlock and Dr. Kathleen Donovan Kennelly, Board-certified neurologists, provided examination findings and addressed appellant's bilateral wrist, right elbow, and cervical conditions.

In a February 3, 2016 prescription, Chelcy M. Heck, a physician assistant, confirmed the diagnosis of carpal tunnel syndrome and addressed appellant's work restriction. She noted that he was scheduled to undergo surgery for his condition on February 26, 2016.

By a report of contact dated February 5, 2016, the employing establishment's chief nurse advised that on February 5, 2016 appellant requested work accommodations that did not require repetitive motion of his hand.

In a February 10, 2016 report of contact, Howard R. Oliver, an interim nursing supervisor, related that commencing on February 8, 2016 appellant was provided with reasonable accommodations for his carpal tunnel syndrome. He noted that on the date of his report appellant appeared to be in no distress and was not wearing a wrist brace on his left wrist or an elbow brace/pad on his right arm. Mr. Oliver, in a February 24, 2016 narrative statement, contended that appellant had not sustained the alleged injury due to a mild-to-moderate daily increase in his work duties. He noted that appellant processed an increase of nine patients in November 2015 and five patients in December 2015 on a daily basis. Mr. Oliver stated that he was not informed about these concerns until January 25, 2016, one month before appellant's retirement. Appellant did not acknowledge any carpal tunnel syndrome complications during prior meetings and did not request an ergonomic consult during the time that he worked as an interim nurse manager. Mr. Oliver submitted clinic workload reports dated June 1, 2015 to January 31, 2016 that compared current visits to the clinic and visits made during the previous year.

In a March 21, 2016 decision, OWCP denied appellant's claim for compensation, finding that it was untimely filed. It found that the date of injury was March 1, 2011 and he had not filed

the claim within three years. OWCP noted that appellant had not submitted any factual evidence regarding the filing of his claim in response to the development letter.

### **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.<sup>2</sup> 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.<sup>3</sup> Under this section, a claim must be filed within three years unless “the immediate superior had actual knowledge of the injury or death within 30 days” or written notice of the injury or death was provided, as specified under 5 U.S.C. § 8119, within 30 days.<sup>4</sup> Pursuant to 5 U.S.C. § 8122(b), 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.

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.<sup>5</sup> If the employee continues to be exposed to the identified employment factors 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 employment, the time limitation begins to run on the date of the last exposure to the implicated factors.<sup>6</sup>

### **ANALYSIS**

In the present case, appellant filed an occupational disease claim on February 5, 2016. The evidence of record indicates that he was claiming a left wrist injury resulting from his work duties in federal employment. Appellant claimed that his left carpal tunnel syndrome was aggravated by excessive typing and repetitive procedures at work. The reverse of the claim form reported that he was last exposed to conditions alleged to have caused his left wrist injury on February 5, 2016. Mr. Oliver related that appellant retired in February 2016, one month after he became aware of appellant’s concerns on January 25, 2016.

OWCP has found the claim untimely filed under 5 U.S.C. § 8122(a) because appellant indicated he was aware of an employment-related left wrist injury on March 1, 2011 and did not file the claim until February 5, 2016.<sup>7</sup> It, however, failed to acknowledge that appellant’s claim

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<sup>2</sup> *Charles Walker*, 55 ECAB 238, 239 (2004).

<sup>3</sup> 5 U.S.C. § 8122(a).

<sup>4</sup> *Id.* at § 8119.

<sup>5</sup> *Larry E. Young*, 52 ECAB 264 (2001).

<sup>6</sup> *Id.*; *Linda J. Reeves*, 48 ECAB 373 (1997).

<sup>7</sup> OWCP’s March 21, 2016 decision also inadvertently states that appellant’s claim was filed on January 25, 2016. This appears to be a typographical error as the record reflects that appellant filed his claim on February 5, 2016.

is an occupational disease claim based on continuing exposure to the identified work factors. The time limitation does not begin to run until appellant is no longer exposed to the identified factors alleged to have contributed to an employment injury. As the Board has explained, “if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.”<sup>8</sup> The date of last exposure in this case was not until February 5, 2016. His claim was therefore timely filed under 5 U.S.C. § 8122(a).

Since OWCP has not properly considered the merits of the claim, the case will be remanded to OWCP. After such further development as is warranted, OWCP should issue a *de novo* decision.

### **CONCLUSION**

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

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 21, 2016 decision of the Office of Workers’ Compensation Program is reversed and the case remanded for further action consistent with this decision of the Board.

Issued: August 12, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees’ Compensation Appeals Board

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

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<sup>8</sup> *J.C.*, Docket No. 15-1596 (issued November 5, 2015).