



1999 he first became aware of his sarcoidosis. However, it was not until December 7, 2012 that he realized the condition had been caused or aggravated by his federal employment.

In a statement dated December 21, 2012, appellant related that as the result of a physical performed by the employing establishment he was diagnosed with pulmonary sarcoidosis. He stated that his condition was stable until it worsened in 2004 and ultimately led to his disability retirement in 2004. Appellant alleged that he was exposed to dust particles when repairing and servicing air conditioning systems in the New Executive Office Building carpenter's shop. He noted that no protective equipment was worn and that he was exposed every three months, for 15 minutes to an hour, during the period 1999 to 2001. Appellant indicated that he was also required to restock wood and clean and light the fireplaces in the west wing offices. He reported exposure to metallic dust from 1989 to 1995 while working for the Department of Defense.

On January 2, 2013 OWCP received a September 7, 2004 notification of personnel action (Form SF-50) noting that appellant had been approved by the Office of Personnel Management (OPM) for disability retirement effective that same date.

In support of his claim, appellant submitted a February 9, 2000 computerized tomography (CT) scan which diagnosed enlarged mediastinal and hilar nodes, several noncalcified pulmonary nodes, and pleural-based densities. Pulmonary function reports dated February 17 and August 31, 2000 from Dr. Earl M. Armstrong, a treating Board-certified internist with subspecialty certifications in pulmonary diseases and critical care medicine diagnosed possible mild restrictive ventilator defect.

Dr. Allison R. Edwards, an attending Board-certified internist, submitted a December 7, 2012 report in which she described the characteristics of sarcoidosis. She opined that appellant's weakened immune system had been aggravated by his exposure to wood dust during repairs of the air conditioning unit in the Carpenter's Shop. Dr. Edwards also opined that appellant's condition had been aggravated by restocking and cleaning fireplaces, without use of a facial mask, at the White House East and West Wing offices. She attributed appellant's sarcoidosis to appellant's wood dust exposure with no protection for over seven years. Dr. Edwards explained wood dust exposure aggravated appellant's preexisting weakened and suppressed immune system. In support of her conclusions, Dr. Edwards related that it was valid to conclude that appellant's exposure to work pollutants and wood dust during the period 1997 to 2004 contributed to his sarcoidosis.

By letter dated January 28, 2013, OWCP informed appellant that the evidence of record was insufficient to establish that he had filed a timely claim under 5 U.S.C. § 8122(a). Appellant was afforded 30 days to submit additional evidence.

OWCP received additional evidence on February 11, 2013. On December 7, 2000 Dr. Armstrong advised the employing establishment that the medication prescribed for appellant's sarcoidosis caused a voracious appetite along with frequent eating.

In a February 9, 2004 note, Dr. Edwards indicated that appellant could not work with fiberglass due to his chronic lung problem.

In a June 16, 2004 letter, Dr. Edwards requested work accommodations based on appellant's various conditions including mitral regurgitation, sarcoidosis, and psoriatic arthritis. The letter was addressed to Roderick Quick, the employing establishment's chief operating engineer and appellant's third line supervisor. In support of the accommodation request, Dr. Edwards noted appellant's current work duties aggravated the listed conditions.

In progress notes covering the period between May 27 to October 28, 2011, Dr. Binu J. George, a fellow in pulmonary medicine, and Dr. Samuel Spagnolo, an attending Board-certified pulmonologist and internist, diagnosed sarcoidosis and left lower lobe pleural nodule and provided physical examination findings. Their reports noted a history of sarcoidosis, which had been first diagnosed in 2000.

In a February 4, 2013 e-mail, Supervisor Quick stated appellant had never been exposed long term to or assigned to an environment containing wood dust. He then provided a list of the places where appellant had worked. Supervisor Quick related that, when appellant informed him of the sarcoidosis diagnosis, which had been found on a recent physical, that appellant attributed it to his breathing jet fuel fumes while in the military. He stated that he had never received any information supporting that appellant had been exposed to wood dust.

By decision dated May 2, 2013, OWCP denied appellant's claim as untimely due to his failure to file his claim within the applicable three-year time limitation under 5 U.S.C. § 8122. It found the date of injury to be December 14, 1999 with the date of last exposure as September 7, 2004. OWCP found the claim untimely as appellant did not file his claim until January 2, 2013, which was more than three years after the date of last exposure. As the claim was denied on the threshold issue of timeliness, it did not address the issue of appellant's exposures or the medical evidence.

On May 7, 2013 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated July 23, 2013, the hearing representative affirmed the May 2, 2013 decision denying appellant's claim on the basis that it had been untimely filed under 5 U.S.C. § 8122(a). She found no evidence in the record showing that the physical examinations performed by Physical Health Services were part of an employee testing program for a recognized environmental hazard. The hearing representative further found the record devoid of any evidence demonstrating actual knowledge by a supervisor or the employing establishment that appellant attributed his condition to work exposure.

In correspondence dated August 23, 2013, appellant requested reconsideration. He submitted a January 18, 2005 report regarding an investigation for complaint of discrimination. This report contained a statement from Supervisor Quick. Supervisor Quick stated that after appellant informed him of his breathing problem he researched the condition on the Internet for appellant. He then printed out the information he found and gave it to appellant. Supervisor Quick discussed work accommodations made for appellant which were based on reports from his treating physicians. He stated that appellant came in with a doctor's note indicating that he could not work with fiberglass due to his lung condition and that this occurred after appellant worked on replacing filters in an air condition unit. Supervisor Quick noted that

he had received a June 16, 2004 doctor's note diagnosing a number of conditions and which indicated that appellant could not perform his usual work duties.

By decision dated November 21, 2013, OWCP denied modification. It found that appellant had failed to submit any evidence establishing that he had timely filed his occupational disease claim.

In a form dated December 3, 2013, appellant again requested reconsideration. He argued that his submission of his 1996 periodic health evaluation established awareness on the part of the employing establishment of an environmental hazard as employees were encouraged and recommended to participate. Appellant submitted a May 16, 1996 periodic health evaluation forms and e-mails dated August 30 and November 22, 2013 from Michael Kleinman, Professional Health Services, Inc. Mr. Kleinman related that 30 days was a typical turnaround time and medical testing reports in 1999 and 2002 would likely have been issued within 30 workdays.

By decision dated March 7, 2014, OWCP denied modification. It again found that appellant failed to submit any evidence showing that his claim had been timely filed under 5 U.S.C. § 8122(a).

On March 17, 2014 appellant again requested reconsideration and submitted the following evidence. He also resubmitted Dr. Edwards' June 16, 2004 report.

A June 30, 2004 work assignment list from John J. Douglas to Milton T. Townsell, supervisor, contained instructions that appellant was to cut fiberglass duct wrap.

In an amended Form CA-2, appellant changed the date that he first realized that his sarcoidosis had been caused or aggravated by his employment from December 7, 2012 to June 16, 2004.

In an undated statement from the discrimination complaint investigation, Mr. Townsell, appellant's first line supervisor, stated that he was unaware of appellant's disabilities. He stated that appellant directly notified the second line supervisor of any disabilities. Supervisor Townsell stated that appellant had been assigned light-duty work following receipt of a February 4, 2004 note from Dr. Turkiewicz. Management provided instructions to Mr. Townsell regarding light work for appellant, which included no tasks involving fiberglass. From February 2004 until his retirement later that year, appellant was initially assigned to light-duty work which was later changed to light office work.

By decision dated June 4, 2014, OWCP denied modification. It found that while appellant alleged that he informed his supervisor of his respiratory condition, the evidence of record did not establish that appellant had informed his supervisor that his condition resulted from his federal employment.

On November 12, 2014 appellant again requested reconsideration. He argued that he had incorrectly interpreted the date he first became aware of a causal connection on his CA-2 form. Appellant noted June 16, 2004, the date of his doctor's written notice, to be the correct date and that the December 7, 2012 narrative report date was incorrect. He submitted reports dated

June 16, 2004 and December 7, 2012 by Dr. Edwards, his statement and a July 8, 2004 memorandum to appellant from Stephen R. Pearson, Deputy Director.

In the July 8, 2004 memorandum, Mr. Pearson denied appellant's request for reasonable accommodation as the medical evidence was insufficient. He requested appellant to provide additional medical evidence including a diagnosis, current clinical status, prognosis, a narrative explanation for any conclusions, an explanation for the basis of the conclusion, and basis for the requested accommodation.

By decision dated February 2, 2015, OWCP denied modification. It again found that the evidence submitted did not establish that appellant placed the employing establishment on notice of a work-related medical condition.

On April 13, 2015 appellant again requested reconsideration. He submitted a May 26, 2004 request for reasonable accommodation to avoid direct sunlight, a May 26, 2004 dermatology progress note from Dr. George K. Verghese, a dermatology resident, and a May 25, 2004 rheumatology progress note from Dr. Turkiewicz.

Dr. Verghese diagnosed psoriasis vulgaris. He opined that appellant should avoid sun exposure and remain on a night schedule.

Dr. Turkiewicz, in a May 24, 2004 progress note, reported that since March 2000 appellant has been a patient at the Rheumatology Clinic where he has been treated for pain and stiffness of his neck, hands, and knees. He recommended that appellant avoid heavy lifting, prolonged kneeling, and prolonged and sustained hand and wrist joint use as these activities could aggravate his symptoms.

By decision dated July 10, 2015, OWCP denied modification. It found that the evidence of record did not establish that appellant's immediate supervisor or another official at the employing establishment had knowledge of his claim for sarcoidosis related to factors of his federal employment within 30 days of the date of last exposure, or within 30 days of when appellant should have been reasonably aware that his condition was caused or aggravated by his employment.

### **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> Compensation

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<sup>2</sup> *C.D.*, 58 ECAB 146 (2006); *David R. Morey*, 55 ECAB 642 (2004); *Mitchell Murray*, 53 ECAB 601 (2002).

<sup>3</sup> *W.L.*, 59 ECAB 362 (2008); *Gerald A. Preston*, 57 ECAB 270 (2005); *Laura L. Harrison*, 52 ECAB 515 (2001).

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.”<sup>4</sup>

Section 8119 of FECA 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 it 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 when 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 the notice.<sup>5</sup> Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.<sup>6</sup>

Section 8122(b) 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.<sup>7</sup> 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 was injured, but also knew or reasonably should have known that it was an on-the-job injury.<sup>8</sup>

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. 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>9</sup> 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.<sup>10</sup> Section

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<sup>4</sup> 5 U.S.C. § 8122(a). See *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *J.P.*, 59 ECAB 178 (2007); *Cory W. Davis*, 57 ECAB 674 (2006).

<sup>5</sup> 5 U.S.C. § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

<sup>6</sup> *Laura L. Harrison*, 52 ECAB 518 (2001).

<sup>7</sup> 5 U.S.C. § 8119(b); *Delmont L. Thompson*, 51 ECAB 166 (1999).

<sup>8</sup> 5 U.S.C. § 8122(b); *Duet Brinson*, 52 ECAB 168 (2000).

<sup>9</sup> *Larry E. Young*, *supra* note 5.

<sup>10</sup> *Id.*

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.<sup>11</sup> The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.<sup>12</sup>

### ANALYSIS

The Board finds that appellant did not file his claim with the applicable time limitation provisions of FECA. On December 21, 2012 appellant filed an occupational disease claim alleging that his sarcoidosis was due to wood dust exposure while repairing, servicing, and troubleshooting the air conditioning and heating systems in the carpenter's shop. On his initial occupational disease form, appellant stated that he first realized that his sarcoidosis was caused or aggravated by his employment on December 7, 2012. In an amended CA-2 form he changed the date to June 16, 2004, as the date he first realized his condition had been caused or aggravated by his employment.

If an employee continues to be exposed to injurious working conditions the time limitations begins to run on the date of last exposure.<sup>13</sup> Consequently, the time for filing appellant's claim began on September 7, 2004, the date of his retirement. He filed his occupational disease claim on December 21, 2012, more than three years after the last date of exposure. Consequently, appellant filed his claim outside the three-year time limitation period.<sup>14</sup>

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 within 30 days or if he provided written notice within 30 days. There is no evidence, that a supervisor or the employing establishment had knowledge of his occupational disease claim within 30 days or that he provided written notice of injury within 30 days of the date of last exposure. Supervisor Quick, a third line supervisor, indicated that appellant told him that a physical examination found sarcoidosis, which appellant attributed to nonwork factors. Appellant's immediate supervisor, Mr. Townsell denied any knowledge of appellant's conditions and disabilities. While there is evidence that Supervisor Quick knew about appellant's sarcoidosis, this does not establish that he was aware that appellant attributed this condition to factors of his federal employment.<sup>15</sup> In the report dated June 16, 2004, Dr. Edwards addressed to Supervisor Quick was vague at best, noting sarcoidosis as well as mitral regurgitation and psoriatic arthritis and a statement that appellant's current work duties aggravated the listed conditions. This report did not specifically state that appellant's sarcoidosis had been caused by his employment duties. Furthermore, Supervisor Quick has explained that when appellant informed him of his sarcoidosis, he also

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<sup>11</sup> 5 U.S.C. § 8122(b).

<sup>12</sup> *Gerald A. Preston*, 57 ECAB 270 (2005); *Debra Young Bruce*, 52 ECAB 315 (2001).

<sup>13</sup> *See R.V.*, Docket No. 10-1776 (issued April 1, 2011); *James W. Beavers*, 57 ECAB 254 (2005).

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 8.

informed him that this condition had been caused by exposure to jet fuel fumes at his previous employment. Appellant has therefore not established that the employing establishment had notice that his diagnosed condition was caused by his employment, within 30 days of his retirement. Thus, appellant's claim is not timely under section 8122(a).

In cases of latent disability, the time limitation does not begin to run until the claimant is aware or by reasonable diligence should have been aware of the causal relationship between the employment and the compensable disability.<sup>16</sup> Appellant has now admitted, and the evidence establishes that appellant was aware, or by the exercise of reasonable diligence, should have been aware of a possible causal relationship between his employment and his sarcoidosis by June 16, 2004. Appellant's statements and the amended CA-2 form indicating June 16, 2004 as the date he first became aware of a causal connection, all support that he was aware of a causal connection by June 16, 2004.

For the above reasons, appellant's claim is untimely filed and is barred by the applicable time limitation provisions 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. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant's claim for compensation was not filed within the applicable time limitation provisions of FECA.

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<sup>16</sup> 5 U.S.C. § 8122(b); see *Gerald A. Preston*, 57 ECAB 270 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 10, 2015 is affirmed.

Issued: June 8, 2016  
Washington, DC

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

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

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