

FACTUAL HISTORY

On February 24, 2016 appellant, then a 58-year-old maintenance worker, filed an occupational disease claim (Form CA-2) alleging that he fell on ice injuring his left shoulder, back, and neck. He first realized his condition on December 22, 2010 and first related that condition to his employment on that date. Appellant alleged that his condition worsened daily and that he was forced to take disability retirement due to moderate degenerative disc disease on September 12, 2012.³ On the reverse of the form, the employing establishment indicated that appellant began disability retirement on July 6, 2012.

Appellant submitted an incident report from the employing establishment dated December 22, 2010 which indicated injury to his elbow, forearm, and wrist, as well as a back strain. He also submitted an incident report from the employing establishment which indicated that on December 22, 2010 as he exited a building onto a concrete landing, he slipped backwards on some ice and slid down four steps on his buttocks. Appellant underwent a cervical magnetic resonance imaging (MRI) scan on December 14, 2010 which demonstrated disc protrusions from C3-4 through C6-7 with moderate central canal stenosis at C3-4 and C4-5.

OWCP reviewed appellant's prior claims which included a July 20, 2011 letter in claim number xxxxxx338 indicating that his traumatic injury claim on December 22, 2010 was accepted for left wrist sprain and contusion of the back. It also included a January 16, 2013 statement of accepted facts which indicated that he slipped and fell on December 22, 2010 and retired on disability. OWCP listed appellant's additional medical conditions as multilevel herniated discs with degenerative changes of the cervical spine, cervical spinal stenosis and prior work-related cervical strain on October 25, 1994.

In a letter dated March 24, 2016, OWCP notified appellant that the evidence was not sufficient to support that he had filed a timely claim for an occupational injury. It again advised appellant that if he was claiming that the injuries described were progressions or consequences of his December 22, 2010 employment injury, then he should file a claim for recurrence in his traumatic injury claim. OWCP provided appellant with a list of questions and requested additional factual evidence that his claim was filed within three years of the date he became aware of a relationship between his condition and his employment as well as medical evidence in support of his occupational disease claim.

Appellant responded to OWCP's questions on April 22, 2016. He noted that he was attempting to file an occupational disease claim for his condition on December 22, 2010. Appellant described his job duties and his prior employment injuries. He noted his December 22, 2010 traumatic fall, notification of this fall to his supervisor, and his disability retirement on July 6, 2012. Appellant asserted that his diagnosed condition was moderate degenerative disc disease.

³ The record contains a February 12, 2016 telephone memorandum from OWCP noting that appellant requested compensation benefits under claim number xxxxxx338 and was informed that his claim was closed. OWCP's representative directed appellant to file a recurrence of disability (Form CA-2a) if he believed that his employment-related condition had worsened. Claim number xxxxxx338 is not before the Board on the present appeal.

By decision dated May 5, 2016, OWCP denied appellant's occupational disease claim as it was not filed in a timely manner. It noted that appellant asserted that his supervisor was aware of his traumatic injury claim, but found that there was no evidence that he had actual knowledge of appellant's occupational disease claim. OWCP explained that an occupational disease claim related to an injury which developed over time, not on a single day. It further explained that appellant's allegation that his supervisor was aware of his occupational disease was insufficient, and that a statement from the supervisor or other corroborating evidence was necessary.

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.⁴ 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.⁵ 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.⁶ 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.⁷ Even if a claim is not timely 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 8119.⁸ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.⁹ 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.¹⁰

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 or her condition and his or 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.¹¹ Where the

⁴ *Charles Walker*, 55 ECAB 238 (2004); *P.R.*, Docket No. 16-0787 (issued June 28, 2016).

⁵ 5 U.S.C. § 8122(a).

⁶ *Id.* at § 8122(b).

⁷ *See Linda J. Reeves*, 48 ECAB 373 (1997).

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

⁹ *Willis E. Bailey*, 49 ECAB 511 (1998); *B.H.*, Docket No. 15-0970 (issued August 17, 2015).

¹⁰ *Edward C. Hornor*, 43 ECAB 834, 840 (1992).

¹¹ *Larry E. Young*, *supra* note 8.

employee continues in the same employment after he or she reasonably should have been aware of 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.¹²

ANALYSIS

The Board finds that appellant failed to file his claim within the applicable time limitation provisions of FECA. On February 24, 2016 appellant filed an occupational disease claim alleging that his left shoulder, neck and back conditions were due to his employment. On his Form CA-2 appellant indicated that he first became aware of these conditions on December 22, 2010 and first related these conditions to his employment on that date. On the reverse of the form, the employing establishment indicated that appellant utilized disability retirement beginning on July 6, 2012.

If an employee continues to be exposed to injurious working conditions the time limitations begins to run on the date of last exposure.¹³ Consequently, the time for filing appellant's claim began on July 6, 2012, the date of his retirement. He filed his occupational disease claim on December 22, 2015, more than three years after the last date of exposure. Consequently, appellant filed his claim outside the three-year time limitation period.¹³

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.¹⁴ Appellant has admitted that he was aware of a causal relationship between his employment and his left shoulder, neck, and back conditions on December 22, 2010 and first related that condition to his employment on that date.

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 occupational disease claim was not filed within the applicable time limitation provisions of FECA.

¹² *Id.*

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

¹⁴ 5 U.S.C. § 8122(b). See *Gerald A. Preston*, 57 ECAB 270 (2005).

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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