

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

_____)	
D.D., Appellant)	
)	
and)	Docket No. 19-0548
)	Issued: December 16, 2019
U.S. POSTAL SERVICE, POST OFFICE, Perrysburg, OH, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 2, 2019 appellant filed a timely appeal from a December 20, 2018 merit 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On April 17, 2018 appellant, then a 62-year-old retired mail carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral carpal tunnel syndrome due to factors of his federal employment including casing mail. He noted that his hands went numb in 2003 and that they froze up completely in June and July 2017. Appellant noted that he underwent

¹ 5 U.S.C. § 8101 *et seq.*

right carpal tunnel surgery in June 2017, and left carpal tunnel surgery in July 2017. He indicated that he first became aware of his condition and realized that it resulted from his employment on October 3, 2003. On the reverse side of the claim form, the employing establishment indicated that appellant had been approved for disability retirement on October 24, 2011, and his last day in pay status was November 10, 2011.²

In an April 20, 2018 letter, D.Z., a human resource specialist for the employing establishment, informed OWCP that appellant had retired and that he had a previously closed CA-2 claim dated October 2, 2003.³ He also related that appellant worked full-time, limited duty from October 2 to November 25, 2003 and was released to full duty on March 4, 2004.

In a development letter dated April 23, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence necessary to support his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information.

On April 30, 2018 OWCP received appellant's completed questionnaire dated April 28, 2018. Appellant indicated that the employment-related activities which he believe contributed to his condition was casing and delivering mail in a "heavy volume" post office for 27 years. He recounted that in 2003 he started to notice that his fingers went numb. Appellant related that in January 2017 his fingers froze completely and he underwent surgery. He noted that he had retired due to disability for his knees on October 24, 2011. In response to the question regarding why he did not file his claim until April 20, 2018, he reported that appellant had bad knees, which required five prior surgeries.

By decision dated June 13, 2018, OWCP denied appellant's claim finding that it was untimely filed pursuant to 5 U.S.C. § 8122. It noted that the evidence of record did not establish that he filed his claim within three years of the date of injury of October 3, 2003 or that his immediate supervisor had actual knowledge of the claim within 30 days of the date of injury.

On June 18, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 14, 2018. He related that he had not worked since October 24, 2011 due to unrelated lower extremity problems. Appellant also testified that in 2003 he had not informed his supervisor or anyone in management about his hands and fingers going numb because they would have dismissed him or put him on disability.

Appellant submitted medical evidence, including an electromyography and nerve conduction velocity (EMG/NCV) study, operative reports, and progress notes dated May 18 to October 6, 2017 by Dr. Dennis R. Assenmacher, an orthopedic surgeon, regarding his medical treatment for bilateral carpal tunnel syndrome.

² The employing establishment further noted that appellant's age-related regular retirement was effective July 24, 2017.

³ Under OWCP File No. xxxxxx754, appellant has an accepted occupational disease claim for a right knee condition, which arose on or about October 2, 2003. Additionally, under OWCP File No. xxxxxx400, appellant has an accepted traumatic injury claim for a left knee condition, which arose on September 9, 2003.

By decision dated December 20, 2018, an OWCP hearing representative affirmed the June 13, 2018 denial decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.⁸ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation, disability, or death, must be filed within three years after the injury or death.⁹

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 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.¹⁰ Where the employee continues in the same employment 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.¹¹

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

⁴ *Supra* note 1.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *A.S.*, Docket No. 18-1094 (issued February 7, 2019); *C.S.*, Docket No. 18-0009 (issued March 22, 2018); *David R. Morey*, 55 ECAB 642 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

⁹ 5 U.S.C. § 8122(a); *see S.F.*, Docket No. 19-0283 (issued July 15, 2019); *W.L.*, 59 ECAB 362 (2008).

¹⁰ *R.T.*, Docket No. 18-1590 (issued February 15, 2019).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993); *see also G.M.*, Docket No. 18-0768 (issued October 4, 2018).

aware, of the causal relationship between the employment and the compensable disability.¹² The Board has emphasized 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,¹³ and 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.¹⁴

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 supervisor 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 8119.¹⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁶

It is the employee's burden of proof to establish that a claim is timely filed.¹⁷

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

On his Form CA-2, appellant indicated that he first became aware of his condition and realized that it resulted from his employment on October 3, 2003. The employing establishment also noted that appellant was approved for disability retirement in 2011 and appellant testified that he retired due to disability on October 24, 2011 because of knee conditions. Appellant filed his Form CA-2 on April 17, 2018. Because he did not file his occupational disease claim until April 17, 2018, a date which is more than three years after his last occupational exposure in 2011, he filed his claim outside the three-year time limitation.¹⁸

The Board also finds that there is no evidence of record that appellant's immediate supervisor had actual knowledge, within 30 days of the alleged injury, that continued factors of his federal employment had caused an occupational injury, or that appellant provided written notice of injury within 30 days of the injury.¹⁹ To the contrary, appellant testified during his telephonic hearing that he intentionally did not inform management of his carpal tunnel symptoms

¹² 5 U.S.C. § 8122(b).

¹³ *S.F.*, Docket No. 19-0283 (issued July 15, 2019); *J.M.*, Docket No. 10-1965 (issued May 16, 2011); *Larry E. Young*, 52 ECAB 264 (2001).

¹⁴ *D.R.*, Docket No. 18-1754 (issued April 4, 2019); *Mitchel Murray*, 53 ECAB 601 (2002); *Garyleane A. Williams*, 44 ECAB 441 (1993).

¹⁵ 5 U.S.C. §§ 8122(a)(1), 8122(a)(2); *see also Larry E. Young*, *supra* note 13.

¹⁶ *R.H.*, Docket No. 17-0251 (issued November 28, 2018); *B.H.*, Docket No. 15-0970 (issued August 17, 2015).

¹⁷ *A.S.*, *supra* note 8.

¹⁸ *D.R.*, *supra* note 14.

¹⁹ *S.F.*, *supra* note 13.

in 2003 because he feared he would be dismissed from his job or placed on disability. Appellant, therefore, has not established that this occupational disease claim was timely filed.

On appeal appellant asserted that he did not inform the postmaster in 2003 of his injury because he did not want to be removed for not being able to perform his duties. As explained above, he has not established that he timely filed his occupational disease claim. The Board thus finds that he has not established that he timely filed a claim for compensation.²⁰

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 has not met his burden of proof to establish that he filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the December 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

²⁰ See *L.G.*, Docket No. 16-0535 (issued February 6, 2017).