

By decision dated August 15, 2018, OWCP denied appellant's occupational disease claim finding that although she had submitted a timely claim and that the employment factors occurred as described, she had not submitted medical evidence containing a medical diagnosis in connection with her federal employment duties. Appellant requested reconsideration on September 20, 2018.

By decision dated November 26, 2018, OWCP denied modification of the August 15, 2018 decision. On December 24, 2018 appellant again requested reconsideration. By decision dated January 8, 2019, OWCP denied reconsideration without reviewing the merits of her claim.

The Board has duly considered the matter and finds that this case is not in posture for decision.

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.² 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.³ 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.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 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,⁶ 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.⁷ 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 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 It is the

² *R.T.*, Docket No. 18-1590 (issued February 15, 2019); see *Charles W. Bishop*, 6 ECAB 571 (1954).

³ *Id.*

⁴ See *R.T.*, *supra* note 2.

⁵ 5 U.S.C. § 8122(b).

⁶ *R.T.*, *supra* note 2.

⁷ *D.R.*, Docket No. 18-1754 (issued April 4, 2019).

⁸ 5 U.S.C. §§ 8122(a)(1), 8122(a)(2).

⁹ *D.R.*, *supra* note 7.

employee's burden of proof to establish that a claim is timely filed.¹⁰ Furthermore, OWCP's procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.¹¹

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make proper findings of fact.¹² Its procedure further specifies that a final decision of OWCP should be clear and detailed so that the reader understands the reasons for the disallowance of the benefit.¹³ These requirements are supported by Board precedent.¹⁴

The Board finds that OWCP's November 26, 2018 decision, affirming its prior August 15, 2018 decision, failed to make adequate findings on the issues presented. The November 26, 2018 decision, affirming the prior August 15, 2018 decision, treated appellant's claim as having been timely filed, but did not provide regarding basis for this finding, despite appellant's date of filing, July 14, 2018, being over three years after appellant's last exposure to employment factors on April 11, 2007.¹⁵ The record is unclear as to whether appellant's immediate superior had actual knowledge of her alleged employment-related injury within 30 days or whether written notice of the injury was provided within 30 days.¹⁶ Moreover, the record is unclear as to whether the present claim is a duplicate of appellant's prior claims with a date of injury of January 18, 2006.¹⁷

The Board therefore finds that the case must be remanded for a decision, which includes findings of fact and a clear and precise statement regarding why OWCP found that appellant's claim was timely filed and whether this claim constitutes a duplicate case. Following this and other such further development as OWCP deems necessary, it shall issue an appropriate decision.¹⁸

¹⁰ A.S., Docket No. 18-1094 (issued February 7, 2019).

¹¹ See Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Duplicate Cases*, Chapter 1.400.7 (February 2000); see also *T.M.*, Docket No. 13-1310 (issued January 2, 2014); *W.M.*, Docket No. 09-1609 (issued April 5, 2010).

¹² 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

¹³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹⁴ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960); see also *J.N.*, Docket No. 17-1408 (issued December 11, 2017); *R.B.*, Docket No. 16-1696 (issued September 7, 2017).

¹⁵ See *D.S.*, Docket No. 18-0208 (issued May 4, 2018); *J.N.*, *id.*

¹⁶ See *supra* note 8.

¹⁷ See *M.S.*, Docket No. 13-1024 (issued January 14, 2014).

¹⁸ Given the disposition of this order on the preliminary issue of timeliness, the issue of whether OWCP properly denied appellant's request for reconsideration is moot. See *P.L.*, Docket No. 16-0631 (issued August 9, 2016); *D.A.*, Docket No. 14-0546 (issued October 6, 2014); *L.G.*, Docket No. 13-1950 (issued January 28, 2014).

IT IS HEREBY ORDERED THAT the January 8, 2019 and November 26, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 21, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board