

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

M.B., Appellant)	
)	
and)	Docket No. 20-0066
)	Issued: July 2, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Cape Coral, FL, Employer)	
)	

Appearances:
Anthony S. Arenas, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2019 appellant, through his representative, filed a timely appeal from an August 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On March 18, 2019 appellant, then a 63-year-old retired rural carrier, completed an occupational disease claim (Form CA-2) alleging that he sustained bilateral shoulder rotator cuff tears and bilateral shoulder impingement due to factors of his federal employment. He indicated that he first became aware of his condition and attributed it to factors of his federal employment on April 12, 2016. The Form CA-2 bears an “employing establishment received” stamp dated April 15, 2019. Appellant noted that he delayed filing his occupational disease claim because he did not have a doctor willing to handle a workers’ compensation case. On the reverse side of the claim form, the employing establishment noted that he separated from federal employment on April 29, 2016 and first reported his condition to his supervisor on May 8, 2019.

In an accompanying narrative statement, appellant recounted that, his daily duties as a rural carrier included routing/casing letters for approximately two to three hours. He noted that this involved continuous standing, twisting, turning, and reading over the shoulder. Appellant also reported that he was required to lift trays of unsorted mail weighing between 15 to 30 pounds. He related that after routing letters, he routed, bundled, and loaded letters, magazines, and small parcels. Appellant noted that these tasks required continuous reading over the shoulder, bending, standing, stooping, twisting, reaching, and lifting. He indicated that he had to lift parcels and trays weighing up to 70 pounds. Appellant also stated that he delivered mail approximately five to six hours per day. He reported that this task involved walking, climbing, twisting, turning, bending, reaching, lifting above the shoulder, and stooping. Appellant noted that he also had to unload mail at the end of his shift which required lifting, twisting, stooping, bending, and turning.

In a November 26, 2018 report, Dr. Mark Seldes, a Board-certified family practitioner, related appellant’s history of bilateral shoulder conditions. He noted appellant’s daily requirements as a rural carrier and reviewed his medical record, including reports from different doctors and diagnostic testing. Dr. Seldes diagnosed bilateral shoulder rotator cuff tears and bilateral shoulder impingement. He opined that appellant’s shoulder conditions “came directly from his work[-]related duties.”

In a May 8, 2019 letter, the employing establishment controverted appellant’s claim asserting that appellant waited more than three years to file his claim and was no longer employed with the employing establishment.

In a May 24, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim, noting that it did not appear that his claim was timely filed. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a June 11, 2019 letter, appellant's representative responded to OWCP's development letter. He asserted that appellant mailed his Form CA-2 on March 23, 2019 and that the employing establishment received it on "April 13, 2019," not on May 8, 2019 as the employing establishment alleged. Appellant's representative attached partially legible certified mail receipts and documents with his letter.

By decision dated August 7, 2019, OWCP denied appellant's claim finding that he failed to file a timely claim within the requisite three-year time limit under section 8122(a) of FECA. It found that the date of last exposure was April 29, 2016 and that appellant did not file his occupational disease claim until May 8, 2019, the date on the Form CA-2 that the employing establishment indicated that appellant first reported his condition to his supervisor.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 period of FECA,⁴ 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.⁵ 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.⁶

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.⁷ 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.⁸

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. 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.⁹ Where the employee continues in the same employment after he or she reasonably should have been aware that he or

³ *Supra* note 2.

⁴ *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ 20 C.F.R. § 10.115; *A.S.*, Docket No. 19-1955 (issued April 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *Charles W. Bishop*, 6 ECAB 571 (1954).

⁸ 5 U.S.C. § 8122(a); *A.M.*, Docket No. 19-1345 (issued January 28, 2020); *W.L.*, 59 ECAB 362 (2008).

⁹ *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

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.¹⁰ Section 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.¹¹ It is the employee's burden to establish that a claim is timely filed.¹²

ANALYSIS

The Board finds that appellant filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

Where an 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.¹³ The date of last exposure in the present case is April 29, 2016, the date appellant was separated from federal employment.

OWCP determined that appellant's occupational disease claim was filed on May 8, 2019 as that was the date that appellant's supervisor signed the employing establishment's portion of the Form CA-2. The date an occupational disease claim is filed is determined by the date of receipt of a claim by OWCP or by the employing establishment, rather than the date the claim was completed.¹⁴ This date may be established by the date of receipt of a Form CA-2 by the employing establishment.¹⁵ Appellant's Form CA-2 and his accompanying narrative statement were date stamped as received by the employing establishment on April 15, 2019. The Board therefore finds that appellant's occupational disease claim was filed on April 15, 2019. As the date of last exposure is April 29, 2016, the Board finds that appellant's April 15, 2019 claim was timely filed under the three-year requirement of 5 U.S.C. § 8122(a).¹⁶

As appellant has filed a timely claim for compensation, the case is remanded to OWCP to address the merits of the claim. After such further development as is deemed necessary, it shall issue a *de novo* decision.

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8122(b).

¹² *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

¹³ *S.O.*, *supra* note 9.

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.0801.4 (March 1993).

¹⁵ *Id.* at Chapter 2.0801.4(a)(2).

¹⁶ *A.M.*, *supra* note 8.

CONCLUSION

The Board finds that appellant filed a timely claim for compensation pursuant to 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the August 7, 2019 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: July 2, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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