

floor surfaces for her 31-year federal career. She noted that she first became aware of her condition on January 30, 2012 and realized its relation to her federal employment on January 30, 2015. Appellant did not stop working.

In a development letter dated February 13, 2023, OWCP informed appellant that the evidence of record was insufficient to establish that her claim was timely filed. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP also requested that appellant provide a narrative report from a physician containing a detailed description of findings and a diagnosis, as well as a medical explanation of how the work factors caused or aggravated a medical condition. In a separate development letter of even date, it requested that the employing establishment submit additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statement. OWCP afforded both parties 30 days to submit the necessary evidence.

On March 8, 2023 appellant provided a February 24, 2023 note from Dr. Robert German, a Board-certified orthopedic surgeon, indicating that she could return to work on March 13, 2023.

By decision dated March 23, 2023, OWCP denied appellant's occupational disease claim, finding that she had not filed a timely claim within the requisite three-year time limitation under section 8122(a) of FECA. It found that she first became aware of the relationship between her condition and her federal employment on January 30, 2015, but did not file a claim until February 2, 2023.

On March 30, 2023 appellant requested reconsideration and submitted additional evidence. In an October 6, 2022 note, Dr. German recounted appellant's symptoms of increased left knee pain with weightbearing, and her previous left knee arthroscopy. He diagnosed unilateral primary osteoarthritis, left knee, and left knee pain.

On December 19, 2022 Dr. German performed a left knee total arthroplasty. In a February 14, 2023 note, he reported findings following appellant's total knee replacement. On March 29, 2023 Dr. German again diagnosed left knee osteoarthritis, and indicated that she underwent a total arthroplasty on December 19, 2022.

By decision dated June 27, 2023, OWCP denied modification of its March 23, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ that an injury was sustained in the performance of duty, as

² *Id.*

³ *D.A.*, Docket No. 22-0056 (issued May 9, 2023); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

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

In an occupational disease claim, 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 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.⁸

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 a causal relationship between the employment and the compensable disability.⁹ 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,¹⁰ 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.¹¹

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

⁴ *D.A., id.; J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

⁷ 5 U.S.C. § 8122(a); *FF.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

⁸ *See A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

⁹ 5 U.S.C. § 8122(b).

¹⁰ *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *J.M.*, Docket No. 10-1965 (issued May 16, 2011); *Larry E. Young*, *supra* note 8.

¹¹ *S.F.*, Docket No. 19-0283 (issued July 15, 2019); *Mitchel Murray*, 53 ECAB 601 (2002); *Garyleane A. Williams*, 44 ECAB 441 (1993).

provided within 30 days pursuant to section 8119.¹² The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹³

ANALYSIS

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

On February 2, 2023 appellant filed an occupational disease claim (Form CA-2), noting that she first became aware of her condition on January 30, 2012, and realized its relation to her federal employment on January 30, 2015. She did not stop working.

The time limitation for filing a claim does not begin to run until appellant is no longer exposed to the identified factors alleged to have contributed to an employment injury.¹⁴ As the Board has held, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.¹⁵

As appellant remained exposed to the conditions alleged to have caused her disease or illness, the Board finds that the claim was timely filed.

The case shall, therefore, be remanded for OWCP to address the merits of the claim, to be followed by a *de novo* decision.

¹² 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also* *Larry E. Young*, *supra* note 8.

¹³ *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

¹⁴ *R.W.*, Docket No. 23-0101 (issued May 1, 2023); *C.L.*, Docket No. 16-0854 (issued August 24, 2016); *James W. Beavers*, 57 ECAB 254 (2005). *Larry E. Young*, *supra* note 8; *Linda J. Reeves*, 48 ECAB 373 (1997).

¹⁵ *R.W.*, *C.L.*, *id.*; *R.A.*, Docket No. 16-0090 (issued March 21, 2016); *id.*

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 June 27, 2023 decision of the Office of Workers' Compensation Programs is reversed.

Issued: November 29, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board