

¹ Pursuant to the Board's *Rules of Procedure*, an appeal is considered filed when received by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). However, when the date of receipt would result in a loss of appeal rights, the appeal will be considered to have been filed as of the date of the U.S. Postal Service postmark or other carriers date markings. *Id.* at § 501.3(f)(1). The 180th day following OWCP's July 26, 2024 decision was Wednesday, January 22, 2025. Because using, February 3, 2025, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark, January 22, 2025, is considered the date of filing. Since the postmark date is within 180 days of the July 26, 2024 OWCP decision, the appeal is timely filed. 20 C.F.R. § 501.3(e).

Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

ISSUE

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

FACTUAL HISTORY

On May 18, 2024 appellant, then a 69-year-old retired mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained breathing problems due to factors of his employment. He noted that he first became aware of his condition on November 28, 2016 and first realized its relationship to his federal employment on May 28, 2020. On the back of the form, the employing establishment noted that appellant was last exposed to the conditions he alleged to have caused his disease on March 30, 2016. Appellant retired from the employing establishment effective November 20, 2016.

In a letter dated May 20, 2024, D.T., an employing establishment Occupational Health Claims Processing Specialist, controverted the claim asserting that the factual evidence did not substantiate that appellant was exposed to asbestos at the employing establishment.

In a May 23, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary information. In a separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of the employees' statements, and factual and medical evidence related to appellant's employment-related exposure in the course of his federal employment. OWCP afforded the employing establishment 30 days to respond.

Dr. Rory Allen, an osteopathic physician specializing in family medicine, examined appellant on June 12, 2024, and reported that appellant worked 30 years as a mail handler for the employing establishment. Appellant related that from 2000 to 2016 he was working in a building where asbestos was being removed, and plastic had been placed over the air conditioning ducts during the removal period. He detailed examination findings including clear lungs without dullness or decreased breath sounds. Dr. Allen diagnosed acute respiratory distress. He opined that appellant developed an occupational injury due to exposure to elements in the building where appellant worked.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the July 26, 2024 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In a statement dated June 29, 2024, appellant stated that he was exposed to asbestos from February 26, 2000 through November 30, 2016 when the employing establishment contracted to remove asbestos from the vents in the ceiling in the building where he worked. He believed that he inhaled asbestos from the vents and floors during this period.

A July 12, 2024 chest x-ray diagnosed no acute cardiopulmonary abnormality and no definite calcified or noncalcified pleural plaques were noted.

In a July 15, 2024 report, Dr. Allen reviewed the July 12, 2024 x-ray and related an impression of no acute cardiopulmonary abnormality. He diagnosed acute respiratory distress.

By decision dated July 26, 2024, OWCP denied appellant's occupational disease claim as it was not filed in a timely manner. It found that he initially became aware of the relationship between his disease and illness to his federal employment on May 28, 2020, but did not file a claim until May 20, 2024. Additionally, OWCP found that the evidence of record did not support a finding that his immediate supervisor "had actual knowledge of the injury within 30 days of the date of injury."

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,⁵ that the claim was filed within the applicable time limitation period of FECA, 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 for disability or death must be filed within three years after the injury or death.⁹

⁴ *Supra* note 2.

⁵ *M.P.*, Docket No. 22-0937 (issued January 9, 2024); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *C.D.*, Docket No. 24-0902 (issued September 30, 2024); *M.G.*, Docket No. 18-1616 (issued April 9, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ 20 C.F.R. § 10.115; *M.P.*, *supra* note 5; *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).

⁸ *C.D.*, *supra* note 6; *C.S.*, Docket No. 18-0009 (issued March 22, 2018); *David R. Morey*, 55 ECAB 642 (2004); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

⁹ 5 U.S.C. § 8122(a); *see also S.F.*, Docket No. 19-0283 (issued July 15, 2019); *W.L.*, 59 ECAB 362 (2008); *Gerald A. Preston*, 57 ECAB 270 (2005); *Laura L. Harrison*, 52 ECAB 515 (2001).

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 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 superior had actual knowledge of the 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

ANALYSIS

The Board finds that appellant's occupational disease claim is barred by the applicable time limitation provisions of 5 U.S.C. § 8122(a).

Appellant retired from the employing establishment effective March 30, 2016. On May 20, 2024, he filed a Form CA-2 indicating that he first became aware of his pulmonary condition on November 16, 2016, and realized its relation to his federal employment on May 28, 2020. Because appellant did not file his occupational disease claim until May 20, 2024, more than three years after he first became aware that his pulmonary condition was related to his

¹⁰ *E.M.*, Docket No. 25-01544 (issued February 6, 2025); *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).

¹² 5 U.S.C. § 8122(b).

¹³ *E.M.*, *supra* note 10; *D.H.*, Docket No. 24-0783 (issued December 12, 2024); *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 *E.M.*, *id.*; *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*, 52 ECAB 264 (2001).

¹⁶ *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

federal employment on May 28, 2020, the Board finds that his claim was outside the three-year time limitation.¹⁷

The Board also finds that there is no evidence of record that appellant's immediate supervisor had actual knowledge of his alleged injury and any possible relation to his federal employment within 30 days of its occurrence.¹⁸ The employing establishment controverted the claim and the case record does not contain any evidence documenting that an immediate superior either had actual knowledge of or received written or verbal notification of appellant's condition and the possible relation to his employment within 30 days of its occurrence. As the evidence of record is insufficient to establish actual knowledge by appellant's supervisor of a work-related injury within 30 days the Board finds that appellant has not met his burden of proof.

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 is barred by the applicable time limitation provisions of 5 U.S.C. § 8122(a).

¹⁷ 5 U.S.C. § 8122(a); *L.M.*, Docket No. 24-0120 (issued March 15, 2024); *S.H.*, Docket No. 22-0610 (issued October 21, 2022); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

¹⁸ *L.M.*, *id.*; *L.H.*, Docket No. 19-0818 (issued December 9, 2019); *C.S.*, Docket No. 18-0009 (issued March 22, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 26, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 8, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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