

¹ 5 U.S.C. § 8101 *et seq.*

foot and one bone spur in his right foot due to factors of his federal employment, including prolonged walking while collecting and distributing medical instruments. He noted that he first became aware of the claimed condition and realized its relationship to factors of his federal employment on November 18, 2018. On the reverse side of the form, the employing establishment indicated that appellant stopped work and was last exposed to conditions alleged to have caused the claimed condition on April 13, 2021.

In a development letter dated September 1, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. By separate development letter of event date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor. OWCP affirmed the employing establishment 30 days to respond.

In response, appellant submitted a September 1, 2022 statement wherein he attributed plantar fasciitis and bone spurs to walking seven-and-a-half miles a shift while performing his assigned duties as a medical supply technician aide.

In a January 4, 2021 report, Dr. Tammy Dsouza, an osteopath specializing in family medicine, recounted treating appellant for an unspecified condition commencing in 2017.

In a September 2, 2022 letter, the employing establishment controverted appellant's claim, alleging that while he reported bilateral lower extremity issues attributable to diabetes, appellant did not indicate that his condition was work related. In November 2018, appellant provided work limitations. Commencing November 30, 2018, he was accommodated with a with a modified position as a medical technician aide which met the restrictions set forth by his treating physician which he performed through April 13, 2021. The physical demands were listed as requiring walking and standing during a normal workday: occasional lifting of boxes, supplies and instrument sets; and pulling and pushing various case carts.

OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 30 days remaining to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

OWCP received additional reports by Dr. Jaramillo-Dolan dated June 22, 2018 through November 5, 2021, wherein she diagnosed Type 2 diabetes mellitus with diabetic polyneuropathy, right plantar fasciitis, bilateral calcaneal spurs, primary osteoarthritis of the bilateral feet and ankles, bilateral ankle contractures, plantar fascial fibromatosis, benign neoplasm of connective and other soft tissue of the left lower extremity, bilateral fifth toe pain, viral warts, and a June 18, 2019 left ankle sprain.²

² OWCP also received June 22, 2018 and October 20, 2022 diagnostic images of the lower extremities.

In a statement dated October 4, 2022, appellant attributed the claimed condition to lifting, pushing, and pulling surgical instruments on and off storage racks.

By decision dated November 14, 2022, OWCP denied appellant's occupational disease claim, finding that he had not timely filed his claim for compensation within the requisite three-year time limitation under 5 U.S.C. § 8122.

On December 9, 2022, appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received documents dated November 1, 2018 through March 17, 2022 regarding leave use and retirement.

OWCP also received December 21, 2021 correspondence from a state workers' compensation office and appellant's December 28, 2021 correspondence to OWCP regarding the status of a traumatic injury claim (Form CA-1).

In a January 13, 2022 letter, OWCP informed appellant that it could not proceed with the creation of his traumatic injury claim as the employing agency code, signature, and/or date were missing.

In reports dated February 21 and March 21, 2023, Dr. Jaramillo-Dolan diagnosed plantar fibromatosis.³

By decision dated May 22, 2023, OWCP's hearing representative affirmed the November 14, 2022 decision.

On July 10, 2023, appellant requested reconsideration.

OWCP received documents dated April 21, 2019 through September 13, 2022 regarding appellant's retirement application process and an employing establishment investigation.

OWCP also received a January 24, 2022 Occupational Safety and Health Administration (OSHA) Form 301 injury and illness incident report regarding a November 18, 2018 injury.

Additionally, OWCP received reports dated May 30 and July 18, 2023, wherein Dr. Jaramillo-Dolan diagnosed tinea pedis.

By decision dated November 17, 2023, OWCP denied modification of the May 22, 2023 decision.

OWCP received additional correspondence regarding appellant's retirement application.

³ OWCP also received additional diagnostic images of the feet.

On May 29, 2024, appellant requested reconsideration.

OWCP received a March 31, 2021 employing establishment letter of removal, and June 2024 correspondence regarding legal fees.

By decision dated July 15, 2024, OWCP denied modification of the November 17, 2023 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 period 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 a 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

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

⁴ *Supra* note 2.

⁵ *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.S.*, *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).

⁷ *L.S.*, *id.*; *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *A.R.*, Docket No. 24-0385 (issued May 22, 2024); *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

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

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

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

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that he timely filed his claim for compensation, pursuant to 5 U.S.C. § 8122.

On his Form CA-2, filed on August 30, 2022, appellant noted that he became aware of his condition and realized its relation to his federal employment on November 18, 2018. On the reverse side of the claim form, the employing establishment indicated that he was last exposed to the identified employment factors on April 13, 2021.

Under section 8122(b) of FECA, the time limitation began to run when he became aware of causal relationship, or, if he continued to be exposed to the identified work factors after awareness, the date he was no longer exposed to those factors.¹⁵ The case record establishes that appellant remained employed at the employing establishment from November 18, 2018 through April 13, 2021. While he was no longer working his regular job duties as of July 29, 2019, he was afforded a reasonable accommodation position as a medical technician aide which required walking and standing during a normal workday: occasional lifting of boxes, supplies and instrument sets; and pulling and pushing various case carts. As he continued to be exposed to these work factors through April 13, 2021, the Board finds that appellant's claim was timely filed within the three-year time period under section 8122(b) of FECA.¹⁶

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

¹⁵ *R.G.*, Docket No. 25-0001 (issued October 31, 2024).

¹⁶ *R.G.*, *id.*; *see T.R.*, Docket No. 21-1167 (issued April 4, 2022).

The case shall, therefore, be remanded for OWCP to address the merits of the claim. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.¹⁷

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that he timely filed his claim for compensation, pursuant to 5 U.S.C. § 8122.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2024 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 6, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹⁷ *Id.*