

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLODOVIO W. VIGIL and DEPARTMENT OF THE ARMY,
PUEBLO ARMY DEPOT ACTIVITY, Pueblo, Colo.

*Docket No. 96-1215; Submitted on the Record;
Issued March 23, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's hearing loss claim on the grounds that the claim was not filed within the applicable time limitation provisions of the Federal Employees' Compensation Act.

On August 8, 1995 appellant then a 63-year-old retired paint shop worker, filed a claim alleging that he sustained hearing loss causally related to factors of his federal employment. Appellant did not indicate on the claim form the date that he became aware of his hearing loss or the date that he attributed his hearing loss to his employment.

By letter dated October 18, 1995, the employing establishment noted that appellant retired in 1971 and submitted documentation of his noise exposure during his employment. The employing establishment further indicated that medical records on appellant were not available.

By letter dated December 5, 1995, the Office requested that appellant provide information regarding medical treatment received for his hearing problems and the date that he first noticed his hearing loss and related it to his federal employment.

In response to the Office's request, appellant submitted a statement dated December 13, 1995, in which he related that he had not received any medical treatment for hearing loss. Appellant did not respond to the Office's request for the date upon which he attributed his hearing loss to his federal employment.

By decision dated February 5, 1996, the Office denied appellant's claim on the grounds that it was not timely filed.

The Board finds that the Office properly denied appellant's hearing loss claim on the grounds that his claim was not filed within the applicable time limitation provisions of the Act.

An employee seeking benefits under the Act¹ has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act² and that an injury was sustained in the performance of duty.³

The Act requires in cases of injury prior to September 7, 1974, that a claim be filed within one year of the date that the claimant is aware, or reasonably should have been aware, that his or her condition may have been caused by factors of federal employment. The requirement may be waived if the claim is filed within five years and: (1) it is found that such failure was due to circumstances beyond the control of the person claiming benefits; or (2) that such a person has shown sufficient cause or reason in explanation thereof and material prejudice to the interest of the United States has not resulted from such failure.⁴ The filing provision is a maximum, mandatory requirement which may not be waived regardless of the reasons for, or the circumstances surrounding, the failure to file a claim within the prescribed time.⁵

In this case, appellant was last exposed to the job factors alleged to have caused his condition in 1971, the year he retired. Appellant refused to indicate on the claim form the date on which he became aware that he had a loss of hearing, due to his federal employment. The Office specifically requested information from appellant regarding the date he became aware of his hearing loss, however, he did not respond to the Office’s request. The record further contains no evidence which would establish the date on which appellant reasonably should have been aware that he had a hearing loss due to his employment. The Board therefore, finds that appellant has not met his burden to establish that he timely filed his claim.⁶

On appeal, appellant maintains that he did not know until 1995 that he could submit a claim for hearing loss. However, the Board has held that ignorance of the law does not constitute sufficient cause or reason for failure to file a timely claim.⁷

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁴ *Marcelo Crisostomo*, 42 ECAB 339 (1991).

⁵ *See Robert Shelton*, 28 ECAB 11 (1976).

⁶ The Board also notes that, notwithstanding appellant’s failure to timely file his claim, he would be entitled to medical benefits provided that his immediate supervisor had actual timely knowledge of a work-related condition or injury. However, as there is no evidence that such notice was given to appellant’s immediate supervisor, appellant is not entitled to medical benefits; *see Nathan J. Bryant*, 20 ECAB 192, 194 (1969).

⁷ *Marcelo Crisostomo*, *supra* note 4.

The decision of the Office of Workers' Compensation Programs dated February 5, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member