

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNIE PETERSON and DEPARTMENT OF THE NAVY,
WHIDBEY NAVAL AIR STATION, Oak Harbor, WA

*Docket No. 00-1323; Submitted on the Record;
Issued January 17, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

On September 8, 1998 appellant, then a 77-year-old former naval employee, filed a notice of occupational disease and claim for compensation, (Form CA-2) alleging that his hearing loss was due to his employment as a mechanic at the employing establishment from July 1961 to September 1983. He stated that he first realized his hearing loss was caused by his employment in the "early 1980's." Appellant included an audiogram dated September 8, 1998, which also indicated that the onset of appellant's hearing loss was in "early 1980."

By letter dated December 1, 1998, the Office informed appellant that additional factual and medical information was needed for the Office to render a decision on whether appellant was eligible for benefits under the Act. The Office informed him that he had 30 days to provide the requested information.

On December 30, 1998 appellant faxed in factual data indicating the sources of exposure to noise and the decibel and frequency levels for Whidbey Island, his place of employment from 1961 to 1983. He did not, however, provide any medical information addressing his hearing problem.

On March 3, 1999 the Office again wrote appellant asking for an explanation as to why he waited nearly twenty years to file his claim, since he indicated on his notice of occupational disease that he first became aware of his hearing problem in the early 1980's.

By letter dated March 24, 1999, appellant responded by stating: "I knew that my hearing was getting bad in the early 1980's and realized it was work related. However, I was not aware until recently that there was an option available to file a hearing loss claim with the U.S.

Department of Labor.” He further stated that he did not discuss his hearing loss with his supervisors at the time.

On July 27, 1999 the Office issued a decision denying appellant’s claim for compensation as it did not meet the guidelines for timeliness as required by the Act.

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

Section 8122(a) of the Act states, “An original claim for compensation for disability or death must be filed within three years after the injury or death.”¹ 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 his employment and the compensable disability.² The statute provides an exception which states that a claim may be regarded timely if an immediate superior had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.³

In the instant case, appellant was last exposed to the implicated factors of employment in September 1983. He has also stated that he first became aware of his hearing loss and its work relatedness in “the early 80’s.” The Board therefore finds that appellant had knowledge of his condition and its possible work relatedness approximately 15 years prior to the filing of the claim.

The evidence of record also supports a finding that appellant did not inform his supervisor of his hearing loss. Therefore the statutory exception of supervisory notice does not apply. His claim was clearly outside the three-year limitation period and his claim is therefore untimely.

The Board notes that appellant has alleged that he was not aware that there was an option to file a claim with the Department of Labor. In *Henry B. Sutherland*,⁴ the Board held that ignorance of the law is unacceptable as “sufficient cause or reason” for failure to file a timely claim.

Consequently, appellant’s claim was not filed within the applicable time limitation provisions of the Act.

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

³ 5 U.S.C. § 8122(a)(1); *Jose Salaz*, 41 ECAB 743 (1990).

⁴ 47 ECAB 743 (1990).

The decision of the Office of Workers' Compensation Programs dated July 27, 1999 is hereby affirmed.

Dated, Washington, DC
January 17, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member