United States Department of Labor
Employees' Compensation Appeals Board

A.O., Appellant	)	
and	)	**Docket No. 08-998**
	)	**Issued: August 19, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 19, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' January 14, 2008 merit decision denying her claim as untimely filed. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over this issue.

ISSUE

The issue is whether the Office properly determined that appellant's claim for compensation is barred by the applicable time limitation provisions of the Federal Employees' Compensation Act.

FACTUAL HISTORY

On May 9, 2007 appellant, a 64-year-old retired machine clerk and expediter, filed an occupational disease claim, alleging that she developed carpal tunnel syndrome (CTS) as a result of performing repetitive job duties.[1] She retired, and last worked for the employing

[1] Appellant submitted a copy of a job description for general expediter. Duties included the distribution and processing of mail.

establishment, on April 1, 2003. Appellant stated that she first became aware of her condition on February 1, 2006, and first realized that her condition was caused or aggravated by her employment on April 25, 2006. The employing establishment challenged the claim on the grounds that it was not filed within three years of appellant's retirement. The official supervisor's report reflects that appellant first reported the condition to the employing establishment on November 2, 2007.

In a letter dated November 21, 2007, the Office informed appellant that the information submitted was insufficient to establish her claim. It requested additional factual and medical information, including a description of duties alleged to have contributed to her diagnosed condition, a comprehensive medical report with an opinion as to the cause of the diagnosed condition, and details as to the development of the claimed condition.

In an undated statement, appellant indicated that she "was suffering with carpal tunnel disease before [she] retired in 2003." She stated that she was not aware that she had the disease until she went to the Temple Veterans Administration Medical Center in 2006 due to the severity of the pain in both wrists. Appellant expressed her belief that her CTS was caused by her repetitive work duties as a letter and flat sorter machine operator, which included the use of her fingers, wrists and hands for long periods of time. She claimed that the delay in filing was due to the fact that the employing establishment "gave her the runaround" for six months regarding how to file her claim.

In support of her claim, appellant submitted an April 26, 2006 progress note from Dr. Shang H. Lee, a Board-certified physiatrist, who stated that a recent EMG and nerve conduction study revealed evidence of moderate bilateral carpal tunnel syndrome. She also submitted a July 25, 2006 report from Refugio Rojas, a physician's assistant. Appellant informed Mr. Rojas that she had been experiencing symptoms of bilateral hand numbness since 2000 or 2001, but that her condition had worsened in the last year and a half. Mr. Rojas noted appellant's history of working with repetitive motion on a "10-key machine" with her upper extremities bilaterally for many year, and indicated that she retired several years earlier.

Appellant provided medical reports from her treating physician, Dr. Douglas S. Fornfeist, a Board-certified orthopedic surgeon, who diagnosed bilateral carpal tunnel syndrome. Dr. Fornfeist performed left carpal tunnel release surgery on August 23, 2006 and right carpal tunnel release surgery on October 26, 2006.

By decision dated January 14, 2008, the Office denied appellant's claim on the grounds that it was not timely filed. It advised her that the date of injury was the date of her last occupational exposure, namely April 1, 2003, the date of her retirement, and that she should have been aware of a relationship between her employment and the claimed condition by that date. As her claim was filed on May 9, 2007, more than four years after the date of injury, the Office found that it was untimely filed. It further found that there was no evidence that appellant's supervisor had actual knowledge of her condition within 30 days.

LEGAL PRECEDENT -- ISSUE 1

In cases of injury on or after September 7, 1974, section 8122(a) of the Act[2] provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability or death, including medical care in disability cases, may not be allowed if a claim is not filed within that time unless:

> (1) [T]he immediate superior had actual knowledge of the injury or death 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; or
>
> (2) [W]ritten notice of injury or death as specified in section 8119 was given within 30 days."[3]

Section 8119 provides that a notice of injury or death shall: be given within 30 days after the injury or death; be given to the immediate superior of the employee by personal delivery or by depositing it in the mail properly stamped and addressed; be in writing; state the name and address of the employee; state the year, month, day and hour when, and the particular locality where, the injury or death occurred; state the cause and nature of the injury or, in the case of death, the employment factors believed to be the cause; and be signed by and contain the address of the individual giving the notice.[4] Actual knowledge and written notice of injury under section 8119 serve to satisfy the statutory period for filing an original claim for compensation.[5]

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 condition and his employment. When an employee becomes aware or reasonably should have been aware that he has a condition which has been adversely affected by factors of his 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 effect would be temporary or permanent.[6] Where the employee continues in the same employment after he reasonably should have been aware that he has a condition which has been adversely affected by factors of federal employment,[7] the time limitation begins to run on the

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Id*. at § 8122(a).

[4] *Id*. at § 8119; *Larry E. Young*, 52 ECAB 264 (2001).

[5] *Laura L. Harrison*, 52 ECAB 515 (2001).

[6] *Larry E. Young*, *supra* note 4.

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993); *see James A. Sheppard*, 55 ECAB 515 (2004).

date of the last exposure to the implicated factors.[8] The requirement to file a claim within three years is the claimant's burden and not that of the employing establishment.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant did not timely file a claim for compensation under the Act. Although she was last exposed to repetitive working conditions on April 1, 2003, when she retired, appellant alleged on her CA-2 form that she first became aware that her condition was caused by her employment on April 25, 2006. The evidence of record, however, establishes that she knew, or reasonably should have known, of a relationship between her carpal tunnel condition and factors of her employment at the time of her last exposure.

Appellant's own statements confirm her awareness that her work activities were responsible for her bilateral wrist condition prior to her retirement. She indicated that she "was suffering with carpal tunnel disease before [she] retired in 2003." Appellant expressed her belief that her CTS was caused by her repetitive work duties as a letter and flat sorter machine operator, which included the use of her fingers, wrists and hands for long periods of time. She stated that she had never heard of carpal tunnel syndrome before she went to the Temple V.A. Medical Center in 2006 due to the severity of the pain in both wrists; but she did not deny the existence of the symptoms associated with the CTS condition. The fact that appellant did not know the name of the condition with which she was later diagnosed, does not negate her knowledge of a causal relationship between her employment activities and her wrist condition.

Mr. Rojas, a physician's assistant, diagnosed carpal tunnel syndrome. Appellant informed him that she had been experiencing symptoms of bilateral hand numbness since 2000 or 2001, two to three years prior to her retirement. She described her history of working with repetitive motion on a "10-key machine" with her upper extremities bilaterally for many years, and indicated that she retired on disability in 2003. As a physician's assistant, Mr. Rojas does not qualify as a physician as defined by the Act, and therefore his report does not constitute probative medical evidence.[10] While his diagnosis is not probative, the history he reported is noteworthy and demonstrates that appellant was aware of the relationship between her wrist condition and her employment prior to her retirement in 2003.

Appellant alleged that she was not aware that she had carpal tunnel syndrome until April 25, 2006 when she received a diagnosis of CTS. She argued that, although she had wrist complaints which caused severe pain, she "didn't realize" and had never heard of carpal tunnel syndrome. These allegations are not sufficient to establish that appellant was unaware of the condition, or its relationship to her employment, by the time she retired on April 1, 2003. As the Board has previously noted, when an employee becomes aware, or reasonably should have become aware, that she has a condition which has been adversely affected by factors of his employment, such awareness is competent to start the running of the time limitations period,

[8] *Id.*

[9] *Debra Young Bruce*, 52 ECAB 315 (2001).

[10] *See Roy L. Humphrey*, 57 ECAB 238 (2005).

even though she does not know the precise nature of the impairment, or whether the ultimate result of such adverse effect would be temporary or permanent.[11] In discussing the degree of knowledge required by the employee prior to filing a claim, the Board has emphasized that she need only be aware of a possible relationship between her condition and her employment to commence the statute of limitations. The Board has not required that appellant have definitive evidence of a condition and causal relationship on the date the claim is filed.[12] Appellant experienced substantial pain and numbness in her wrists during her period of employment, which she attributed to repetitive work activities. Although she may have had doubt as to a definitive diagnosis, the Board finds that she knew, or reasonably should have known, of a relationship between her condition and her employment by the date of her last exposure on April 1, 2003.[13] For reasons stated above, the evidence establishes that appellant should have known of a causal relationship between her wrist condition and her employment before she stopped working. Therefore, the time limitations began to run on April 1, 2003, appellant's last day of work and exposure to the implicated employment factors. Since appellant did not file a claim until May 9, 2007, her claim was filed outside the three-year limitation period.

Appellant's claim would still be regarded as timely under section 8122(a)(1) of the Act if her immediate supervisor had actual knowledge of the injury within 30 days of her last exposure to the implicated employment factors on March 1, 1994.[14] Additionally, the claim would be deemed timely if written notice of injury had been provided within 30 days pursuant to 5 U.S.C. § 8119.[15] In the instant case, there is no indication that appellant provided written notice of injury prior to May 9, 2007, the date she filed her claim, or that her immediate supervisor had actual knowledge of her wrist condition.

CONCLUSION

The Board finds that the Office properly determined that appellant's claim for compensation is barred by the applicable time limitation provisions of the Act.

[11] *See Edward Lewis Maslowski*, 42 ECAB 839 (1991); *see also Percy E. Rouse*, 26 ECAB 214 (1974).

[12] *See Edward Lewis Maslowski, supra* note 11. *See also William A. West*, 36 ECAB 525 (1985).

[13] *Cf. Willie Wade*, Docket No. 03-425 (issued April 4, 2003) (where appellant experienced only minor symptoms of wrist pain during his period of employment, and the medical evidence did not show that his condition was such that he was aware or should have been aware of a possible employment-related cause for his condition at that time, the Board found that it was reasonable that he would not relate his claimed upper extremity condition to his employment at that time).

[14] *Larry E. Young*, *supra* note 4. *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3 (March 1993).

[15] 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the January 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2008
Washington

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board