

paroxysmal supraventricular tachycardia (PSVT) as a result of exposure to the chemical Turco 6776 during the course of his federal employment.² He first became aware of his condition on May 10, 2002 and realized that it was caused or aggravated by his employment on May 24, 2002. The employing establishment stated that appellant was last exposed to the conditions alleged to have caused his condition on December 14, 2004, when he was removed from employment. OWCP assigned the current claim file number xxxxxx203.

The record indicates that on December 16, 2002 appellant filed an occupational disease claim alleging that he sustained chest pain, heart trouble, fatigue and drowsiness as a result of exposure to Turco 6776.³ He notified his supervisor of his condition on May 27, 2002. The employing establishment advised that appellant was last exposed to the conditions alleged to have caused his illness on December 12, 2002. It also indicated that he resumed work on May 27, 2002 and that his position had not changed. OWCP assigned the claim file number xxxxxx738.

In support of his 2002 claim, appellant submitted a report dated February 11, 2003 from Dr. Robert V. Glover, Jr., an attending internist, who discussed his diagnosis of paroxysmal atrial tachycardia or a racing heart, in 1973 while in the military. Dr. Glover stated:

“Recently, [appellant] started having palpitations and shortness of breath again and has been unable to control this on his own. These are symptoms of a racing heart. [Appellant] feels that fumes and vapors from his workplace precipitates these attacks now. Especially, he feels that the chemical ‘Turco 6776’ is implicated.” Dr. Glover diagnosed palpitations as a result of sinus rather than atrial tachycardia. He related, “If it can be proven that specifically the chemical exposure causes [appellant’s] heart to race in any way, then obviously he must be removed from this environment.”

Under file number xxxxxx738, OWCP denied appellant’s December 16, 2002 occupational disease claim finding that the medical evidence did not establish that he sustained a cardiac condition due to factors of his federal employment. Appellant appealed to the Board. In a decision dated February 14, 2005, the Board denied his claim that exposure to Turco 6776 caused or aggravated his sinus tachycardia and atrial tachycardia.⁴ The Board found that the medical evidence was insufficient to establish that his cardiac condition resulted from chemical exposure to Turco 6776 in the performance of duty. In an order dated October 21, 2009, the Board set aside a February 11, 2009 nonmerit decision and remanded the case for OWCP to issue an appropriate decision explaining the basis for its conclusion that appellant had not established clear evidence of error in his untimely reconsideration request.⁵ The Board issued a

² Appellant has a 10 percent award from the Department of Veterans Affairs for supraventricular tachycardia.

³ Appellant had previously filed a claim for a traumatic injury on October 9, 2002 due to exposure to Turco 6776 over the past 10 months.

⁴ Docket No. 04-2057 (issued February 14, 2005).

⁵ *Order Remanding Case*, Docket No. 09-894 (issued October 21, 2009).

decision on October 15, 2010 affirming OWCP's November 5, 2009 decision denying his request for reconsideration as untimely and insufficient to show clear evidence of error.⁶

Under the current file number xxxxxx203, appellant submitted a report from Dr. Glover dated May 17, 2012. Dr. Glover noted that appellant's tachycardia had worsened and opined that exposure to Turco 6776 had "aggravated his paroxysmal supraventricular tachycardia or PSVT."

By letter dated June 28, 2012, OWCP requested that appellant submit evidence showing that he filed his claim within three years of the date that he was aware of his condition and its relationship to his employment or the date of last exposure.⁷ It noted that he had previously filed a claim in December 2002 alleging that exposure to Turco 6776 aggravated a preexisting condition. OWCP instructed appellant to follow his appeal rights under that claim if he believed that his current claim was due to an ongoing aggravation of that exposure.

In a response dated July 23, 2012, appellant referred to his 2002 claim and the medical evidence submitted regarding OWCP's questions about the timeliness of his claim. He described the working conditions that he believed caused his condition, including the employing establishment's failure to determine exposure levels to Turco 6776.

On August 10, 2012 the employing establishment controverted the claim. It noted that appellant had submitted the same documents in the May 2012 claim as in the prior claim assigned file number xxxxxx738. The employing establishment advised that he stopped work in 2004 and had not been exposed to any chemical since that time.

By decision dated November 9, 2012, OWCP denied appellant's claim on the grounds that it was not timely filed under section 8122. It noted that he filed the claim almost 10 years after he realized that his alleged condition was employment related and eight years after he stopped work. OWCP also found that the issues raised had been adjudicated in file number xxxxxx738.

On November 21, 2012 appellant requested a review of the written record by an OWCP hearing representative. In a November 21, 2012 statement, he noted that he was not exposed to Turco 6776 in the military. Appellant related that he became aware of his condition on May 24, 2002 and had received medical treatment since that date. He filed the new occupational disease claim based on May 10, 2012 medical evidence that exposure to Turco 6776 aggravated his preexisting PSVT.

By decision dated February 21, 2013, an OWCP hearing representative affirmed the November 9, 2012 decision. He found that the current claim was not a new claim for injury but instead duplicated appellant's claim number xxxxxx738, which was denied. The hearing representative further found that appellant's claim was not timely filed within three years of the

⁶ Docket No. 10-440 (issued October 15, 2010).

⁷ OWCP indicated that appellant was alleging exposure to Turco 6776 while in the military; however, in a July 2012 response he indicated that he was not claiming exposure to the chemical in the military but instead that he experienced PSVT while in the military.

date of awareness of the injury or the date of last exposure. He determined that there was no evidence an immediate supervisor had knowledge of the injury within 30 days.

On appeal, appellant citing *Arnold Gustafson*,⁸ argued that his disability was compensable if work factors aggravated a preexisting condition.

LEGAL PRECEDENT

Section 8122(a) of FECA⁹ provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.¹⁰ 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.¹¹ The Board has held 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.¹² Even if a claim was not timely 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 his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.¹³ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁴ The Board has indicated 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.¹⁵

OWCP's procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.¹⁶

ANALYSIS

On June 12, 2012 appellant filed an occupational disease claim alleging that he sustained an aggravation of supraventricular tachycardia due to exposure to Turco 6776 in the course of his federal employment. OWCP found that his June 12, 2012 occupational disease claim was

⁸ 41 ECAB 131 (1989).

⁹ 5 U.S.C. § 8101 *et seq.*

¹⁰ *Id.* at § 8122(a).

¹¹ *Id.* at § 8122(b).

¹² *See Linda J. Reeves*, 48 ECAB 373 (1997).

¹³ 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young*, 52 ECAB 264 (2001).

¹⁴ *Willis E. Bailey*, 49 ECAB 509 (1998).

¹⁵ *Edward C. Horner*, 43 ECAB 834, 840 (1992).

¹⁶ *See* Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Duplicate Cases*, Chapter 1.400.7 (February 2000); *see also W.M.*, Docket No. 09-1609 (issued April 5, 2010).

untimely filed. On the claim form, appellant noted that he first realized that his condition was employment related on May 24, 2002. The time for filing his occupational disease claim began to run on December 14, 2004, the date of his last exposure to the work factors alleged to have caused his condition.¹⁷ Since appellant did not file the current claim until June 12, 2012, it was not timely filed within the three-year period of limitation.

A claim, however, would still be regarded as timely under section 8122(a)(1) if the immediate supervisor had actual knowledge of the injury within 30 days. The Board notes that appellant previously filed a December 16, 2002 occupational disease claim alleging that he sustained various central nervous system conditions, including tachycardia, due to Turco 6776 exposure. Under that file number, the employing establishment advised that his supervisor had actual knowledge of the alleged injury on May 24, 2002 and that he was last exposed to the conditions alleged to have caused his illness on December 12, 2002. As noted, when an injury is sustained over a period of time, the date of injury is the date of last exposure to those work factors causing injury.¹⁸ Appellant's supervisor had actual knowledge of the alleged injury within 30 days of the date of injury in his December 16, 2002 claim. In his June 12, 2012 claim, appellant again contends that he sustained a cardiac condition caused by exposure to Turco 6776 in the course of his work duties. As he is claiming the same condition as previously alleged in his December 16, 2002 claim based on the same work factors, his claim is timely as his supervisor had actual knowledge of the alleged injury within 30 days.

OWCP further found that appellant's June 12, 2012 claim duplicated a prior claim filed on December 16, 2002. The Board finds that his June 12, 2012 occupational disease claim in file number xxxxxx203 duplicated his December 16, 2002 claim in file number xxxxxx738. As discussed, OWCP previously denied appellant's December 16, 2002 claim in file number xxxxxx738 after finding that the medical evidence did not establish that he sustained a cardiac condition due to exposure to Turco 6776. As noted, in a decision dated February 14, 2005 under Docket No. 04-2057, the Board affirmed OWCP's finding in file number xxxxxx738, noting that the evidence did not establish that exposure to Turco 6776 caused or aggravated his diagnosed cardiac condition of supraventricular tachycardia or sinus tachycardia. In the June 12, 2012 occupational disease claim, appellant again claimed that he sustained an aggravation of supraventricular tachycardia due to exposure to Turco 6776 in the course of employment. The employing establishment stated that he was last exposed to the factors that he claimed caused his condition on December 14, 2004. Appellant's June 12, 2012 claim, however, does not clearly indicate that he is asserting that his injury resulted from any new employment factors beyond those that were considered at the time OWCP denied his December 16, 2002 claim.¹⁹ He did not submit any medical evidence or raise any argument that exposure after 2002 resulted in his claimed condition. As noted, OWCP's procedures contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.²⁰ Consequently,

¹⁷ See *J.P.*, 59 ECAB 178 (2007); *Linda J. Reeves*, 48 ECAB 373 (1997).

¹⁸ See *J.B.*, 58 ECAB 468 (2007).

¹⁹ See *H.D.*, *Order Affirming Case*, Docket No. 12-927 (issued February 12, 2013).

²⁰ See *supra* note 16.

OWCP properly determined that his 2012 occupational disease claim duplicated his prior claim filed in 2002.

On appeal, appellant argues that the Board case law provides that disability is compensable if work aggravates a preexisting condition. As discussed, however, his June 12, 2012 claim duplicates his prior claim filed December 16, 2002. 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant filed a timely claim for compensation but that OWCP properly denied his claim as a duplicate claim.

ORDER

IT IS HEREBY ORDERED THAT the February 21, 2013 and November 9, 2012 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Issued: January 2, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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