

**United States Department of Labor
Employees' Compensation Appeals Board**

D.H., Appellant)
)
and)
)
DEPARTMENT OF TRANSPORTATION,)
FEDERAL AVIATION ADMINISTRATION,)
WASHINGTON DULLES INTERNATIONAL)
AIRPORT, Dulles, VA, Employer)

**Docket No. 24-0783
Issued: December 12, 2024**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 23, 2024 appellant filed a timely appeal from a July 9, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of her oral argument request, appellant asserted that she wished to present the history of her prior accepted claims as OWCP had not fully considered them in adjudicating the present claim. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish that she timely filed her claim for compensation, pursuant to 5 U.S.C. § 8122.

FACTUAL HISTORY

On March 7, 2024 appellant, then a 58-year-old former secretary/driver, filed a traumatic injury claim (Form CA-1) alleging that on January 1, 1997 she experienced an aggravation of previously-accepted bilateral carpal tunnel syndrome and upper extremity tendinitis sustained due to excessive typing without ergonomic supports while in the performance of duty. She recounted that she underwent two left carpal tunnel releases and one right carpal tunnel release. On the reverse side of the form, the employing establishment contended that appellant had not worked for the employing establishment since November 1998.³

In support of her claim, appellant submitted medical evidence, including August 8, 2023 x-rays of appellant's hand, which revealed mild osteoarthritic changes without fracture or dislocation.

In a March 15, 2024 letter, the employing establishment controverted appellant's traumatic injury claim, contending that it was not timely filed within 30 days of the date of injury. It further noted that she had not worked for the employing establishment since 1998.

Thereafter, OWCP received additional medical evidence.

In a March 19, 2024 statement, appellant attributed her bilateral upper extremity conditions to prolonged typing during her federal employment commencing in August 1986. She worked at various duty stations within the employing establishment for the period October 1990 through 1998. During the period June 2020 through February 2024, appellant was employed in the private sector as a delivery driver.

In a March 20, 2024 development letter, OWCP notified appellant of the deficiencies of her claim. It requested that she clarify whether she was claiming a traumatic injury or occupational disease. OWCP afforded appellant 60 days to respond.

In response, appellant submitted a March 22, 2024 statement, wherein she clarified that the type of injury she was claiming was an occupational disease as her conditions were due to "continued and repeated exposure to elements of the work environment over a long period of time." She attached a completed Form CA-2, signed on March 22, 2024, alleging that she sustained

³ Previously, under OWCP File No. xxxxxx314, OWCP accepted appellant's occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome due to factors of her federal employment on or before January 1, 1997. Under OWCP File No. xxxxxx879, it accepted appellant's occupational disease claim (Form CA-2) for left carpal tunnel syndrome and right wrist tendinitis due to factors of her federal employment on or before September 12, 2002. On September 9, 2003 OWCP administratively combined the claims, with OWCP File No. xxxxxx314 serving as the master file. Additionally, appellant filed a Form CA-2 under OWCP File No. xxxxxx220 for nerve entrapment at the elbow due to factors of her federal employment on or before April 27, 2004. OWCP denied the claim. Appellant's claims have not been administratively combined with the present claim.

bilateral cubital tunnel syndrome, bilateral osteoarthritis, and bilateral trigger finger as a result of multiple surgeries for her previously-accepted bilateral carpal tunnel condition under her prior claims. Appellant noted that she first became aware of her conditions and realized their relation to factors of her federal employment on July 12, 2023 following an x-ray on that date.

Appellant submitted additional medical evidence.

In a follow-up development letter dated April 25, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the March 20, 2024 letter 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.

Thereafter, OWCP received additional medical evidence.

By decision dated May 28, 2024, OWCP noted that it had converted appellant's claim to an occupational disease claim. However, it denied her occupational disease claim, finding that she had not timely filed her claim for compensation within the requisite three-year time limitation under 5 U.S.C. § 8122.

On June 28, 2024, appellant requested reconsideration and submitted additional evidence.

By decision dated July 9, 2024, OWCP denied modification of its May 28, 2024 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

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).

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 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 her burden of proof to establish that she timely filed her claim for compensation, pursuant to 5 U.S.C. § 8122.

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).

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 *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).

On her Form CA-1, filed on March 7, 2024, appellant reported that her alleged injury occurred on January 1, 1997. However, in response to OWCP's March 20, 2024 development letter, she clarified that she was claiming an occupational disease as her conditions were due to "continued and repeated exposure to elements of the work environment over a long period of time." Appellant attached a completed Form CA-2, signed on March 22, 2024, alleging that she sustained bilateral cubital tunnel syndrome, bilateral osteoarthritis, and bilateral trigger finger as a result of multiple surgeries for her previously-accepted bilateral carpal tunnel condition under her prior claims. She noted that she first became aware of her conditions and realized their relation to factors of her federal employment on July 12, 2023 following an x-ray on that date. OWCP subsequently converted appellant's claim to an occupational disease claim.

As noted above, 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.¹⁵ 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.¹⁶ The case record supports that, although appellant stopped working for the employing establishment in 1998, she did not become aware of her conditions or realize their relation to her federal employment until July 12, 2023. As such, the Board finds that appellant timely filed her occupational disease claim within the three-year time period under section 8122 of FECA.¹⁷

The case shall, therefore, be remanded for OWCP to adjudicate appellant's occupational disease claim. On remand, for full and fair adjudication, OWCP shall administratively combine the present claim with OWCP File Nos. xxxxxx314, xxxxxx879, xxxxxx166, and xxxxxx220. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

¹⁵ *Supra* note 13.

¹⁶ *Supra* note 14.

¹⁷ *See R.G.*, Docket No. 25-0001 (issued October 31, 2024); *T.R.*, Docket No. 21-1167 (issued April 4, 2022).

ORDER

IT IS HEREBY ORDERED THAT the July 9, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 12, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board