United States Department of Labor
Employees' Compensation Appeals Board

R.S., Appellant	)	
and	)	**Docket No. 24-0419**
	)	**Issued: May 22, 2024**
U.S. POSTAL SERVICE, KILMER POST OFFICE, Edison, NJ, Employer	)	

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On March 12, 2024 appellant filed a timely appeal from a January 31, 2024 merit decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On November 2, 2023 appellant, then a 62-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed severe osteoarthritis in his knees due to factors of his federal employment including excessive walking, ascending and descending stairs,

[1] 5 U.S.C. § 8101 *et seq*.

heavy lifting, and squatting. He noted that he first became aware of his condition on September 20, 2017 and realized its relation to his federal employment on October 18, 2023. Appellant was last exposed to the employment factors alleged to have caused his disease the day he retired, February 28, 2023.

In an undated statement, appellant indicated that he was first diagnosed with osteoarthritis of his knees on September 20, 2017, after years of worsening pain. He indicated that his bilateral knee conditions continued to worsen due to the physicality of his job. On August 22, 2022 appellant underwent a total left knee replacement, and on November 22, 2022 he underwent a total right knee replacement. He indicated that the surgeries left his knees permanently compromised and forced his early retirement. Appellant noted that typical letter carrier routes involve seven hours of walking a day. He described his delivery route, which required loading his truck in the morning, parking in designated spots on the route, and delivering mail. Appellant indicated that his shoulder bag weighed up to 30 pounds and he would handle packages weighing up to 70 pounds. He noted that the prolonged walking, carrying heavy loads, bending, squatting, and ascending and descending stairs, aggravated his bilateral knee osteoarthritis thereby accelerating his need for surgical intervention.

On October 18, 2023 Dr. Yair D. Kissin, a Board-certified orthopedic surgeon, initially treated appellant on September 20, 2017 and diagnosed severe bilateral knee osteoarthritis. He performed a total left knee replacement on August 22, 2022, and a total right knee replacement on November 22, 2022. Dr. Kissin opined to a reasonable degree of medical certainty that the excessive bio-mechanical forces and repetitive nature of appellant's duties including excessive walking while carrying a shoulder bag, bending, and squatting aggravated his arthritic knee condition and accelerated the need for his two knee replacement surgeries and retirement.

In a November 13, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

In a December 20, 2023 response, appellant indicated that he was a retired city carrier who worked for the employing establishment for 32 years. He noted that his condition was the result of cumulative wear and tear on his joints, and he was formally diagnosed with bilateral knee osteoarthritis on September 20, 2017. Appellant reported that after undergoing two total knee replacement surgeries he was unable to perform his job duties and retired. He described his work duties as a letter carrier and asserted that these factors contributed to the aggravation of his condition, accelerating his need for surgeries and retirement. Appellant reported outside activities including little league baseball as a youth, golf, and performing household maintenance activities.

In a follow-up letter dated December 28, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the November 13, 2023 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. No response was received.

By decision dated January 31, 2024, OWCP denied appellant's occupational disease claim, finding that he had not filed a timely claim for compensation within the requisite three-year time limitation under 5 U.S.C. § 8122(a).

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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,[3] 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.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.[6] 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.[7]

In an occupational disease claim, 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 his or her 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.[8]

Section 8122(b) of FECA provides that the time for filing in latent disability cases does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of a causal relationship between the employment and the compensable disability.[9] The Board has emphasized that an employee need only be aware of a possible relationship between

[2] *Id*.

[3] *D.A.*, Docket No. 22-0056 (issued May 9, 2023); *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *D.A., 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).

[5] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

[7] 5 U.S.C. § 8122(a); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

[8] *See A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

[9] 5 U.S.C. § 8122(b).

his or her condition and his or her employment to commence the running of the applicable statute of limitations,[10] 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.[11]

Even if a claim is not 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.[12] The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[13]

ANALYSIS

The Board finds that appellant timely filed his claim for compensation, pursuant to 5 U.S.C. § 8122(a).

On November 2, 2023 appellant filed a Form CA-2, noting that he first became aware of his condition on September 20, 2017, and realized its relation to his federal employment on October 18, 2023. He retired on February 28, 2023. Under section 8122(b), the time limitation for filing a claim does not begin to run until appellant is no longer exposed to the identified factors alleged to have contributed to an employment injury.[14] As the Board has held, if an employee continues to be exposed to injurious working conditions, the time limitation begins to run on the last date of this exposure.[15]

As appellant remained exposed to the conditions alleged to have caused his disease or illness until February 28, 2023, the Board finds that the claim was timely filed.

Appellant has established that this occupational disease claim was timely filed. The case must, therefore, be remanded for OWCP to address the merits of the claim. Following this, and other such development as deemed necessary, OWCP shall issue a *de novo* decision.

[10] *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *J.M.*, Docket No. 10-1965 (issued May 16, 2011); *Larry E. Young, supra* note 8.

[11] *S.F.*, Docket No. 19-0283 (issued July 15, 2019); *Mitchel Murray*, 53 ECAB 601 (2002); *Garyleane A. Williams*, 44 ECAB 441 (1993).

[12] 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young, supra* note 8.

[13] *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

[14] *R.W.*, Docket No. 23-0101 (issued May 1, 2023); *C.L.*, Docket No. 16-0854 (issued August 24, 2016); *James W. Beavers*, 57 ECAB 254 (2005). *Larry E. Young, supra* note 8; *Linda J. Reeves*, 48 ECAB 373 (1997).

[15] *R.W., C.L., id.*; *R.A.*, Docket No. 16-0090 (issued March 21, 2016); *id.*

CONCLUSION

The Board finds that appellant timely filed his claim for compensation, pursuant to 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the January 31, 2024 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 22, 2024
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board