

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

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| <b>R.W., Appellant</b>                        | ) |                            |
|   | ) |                            |
| <b>and</b>                                    | ) | <b>Docket No. 23-0101</b>  |
|   | ) | <b>Issued: May 1, 2023</b> |
| <b>U.S. POSTAL SERVICE, WESTLAND</b>          | ) |                            |
| <b>STATION POST OFFICE, Jacksonville, FL,</b> | ) |                            |
| <b>Employer</b>                               | ) |                            |
| <hr/>   | ) |                            |

*Appearances:* *Case Submitted on the Record*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On October 24, 2022 appellant filed a timely appeal from an October 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 timely filed an occupational disease claim for compensation, pursuant to 5 U.S.C. § 8122(a).

**FACTUAL HISTORY**

On August 23, 2022, appellant, then a 56-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he had developed a left shoulder condition due to

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

factors of his federal employment. He noted that he could no longer perform the duties of his job due to the condition and was forced to retire on April 7, 2022 but the severity of his condition was not discovered until after his retirement. Appellant further indicated that he first became aware of the condition on June 9, 2015 and subsequently realized the relationship to his employment on January 6, 2021. Appellant's supervisor indicated that appellant was last exposed to the alleged factors of employment on April 6, 2022.

An unsigned x-ray report dated March 11, 2021, indicated an impression of advanced left glenohumeral joint arthritis due to prior trauma.

In a development letter dated August 31, 2022, 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 30 days to respond. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding the claim.

On September 22, 2022 appellant received a report dated September 16, 2022 from Dr. Jonathan Wright, an orthopedic surgeon. Dr. Wright noted appellant's diagnosis of severe left shoulder osteoarthritis, based on clinical and radiographic examination. He found limited range of motion and pain upon shoulder examination. Appellant related severe pain with activity, particularly with lifting heavy objects. He further related that physical therapy exacerbated his symptoms. Dr. Wright opined that appellant's work activities as explained to him would aggravate appellant's symptoms given the underlying diagnosis. He further indicated that years of heavy lifting may have contributed to appellant's osteoarthritis, and he would expect appellant to be unable to complete the duties of his job due to the severity of appellant's arthritis.

Appellant submitted a factual statement of disability dated November 4, 2021, in the form of an application for civil service disability retirement benefits. He described lumbar, ankle, left and right knee, left shoulder, and right-hand conditions, as well as incontinence and suffered irritable bowel syndrome as a result of his conditions. Appellant attributed his conditions to the physical requirements of his employment. Appellant's supervisor noted on the claim form that appellant had been employed since June 11, 2005 as a rural route carrier.

OWCP received a position description dated January 12, 2022 detailing the physical requirements of appellant's employment as a rural route carrier, including standing, walking, bending, reaching, and handling heavy containers of mail. It also received an employing establishment form dated February 23, 2022, which indicated that reassignment was not possible for him.

By decision dated October 7, 2022, OWCP denied appellant's claim, finding that he did not file a timely claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122. It found that the date he became aware of the condition was June 9, 2015, and that he had not filed a claim until August 23, 2022. OWCP further found that there was no evidence that appellant's immediate supervisor had actual knowledge within 30 days of the date of injury.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> has the burden of proof to establish the essential elements of his or her claim, including 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 of FECA, 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.<sup>3</sup> 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.<sup>4</sup>

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes a determination on the merits of the claim.<sup>5</sup> 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.<sup>6</sup>

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 or the impairment or whether the ultimate result of such affect would be temporary or permanent.<sup>7</sup> 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.<sup>8</sup> 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 the causal relationship between the employment and the compensable disability.<sup>9</sup> It is the employee's burden of proof to establish that a claim is timely filed.<sup>10</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>5</sup> *J.S.*, Docket No. 22-0347 (issued September 16, 2022); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *R.T.*, Docket No. 18-1590 (issued February 15, 2019); *Charles Walker*, 55 ECAB 238 (2004); *see Charles W. Bishop*, 6 ECAB 571 (1954).

<sup>6</sup> *Id.*

<sup>7</sup> *T.R.*, Docket No. 21-1167 (issued April 4, 2022); *see A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

<sup>8</sup> *T.R. id.*; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young, id.*

<sup>9</sup> 5 U.S.C. § 8122(b).

<sup>10</sup> *T.R. supra* note 7; *D.D.*, Docket No. 19-0548 (issued December 16, 2019); *Gerald A. Preston*, 57 ECAB 270 (2005).

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.<sup>11</sup> The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.<sup>12</sup>

### ANALYSIS

The Board finds that 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).

On August 23, 2022 appellant filed an occupational disease claim (Form CA-2), noting that he first became aware of his condition on June 9, 2015 and realized its relation to his federal employment on January 6, 2021. The employing establishment noted that his last date of exposure to the conditions alleged to have caused disease or illness was April 6, 2022. Appellant indicated that he was forced to retire on April 7, 2022 due to no longer being able to perform the duties of the job.

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.<sup>13</sup> 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.<sup>14</sup>

As appellant's claim was filed within three years of the date of his last exposure to the conditions alleged to have caused his disease or illness, which was April 6, 2022, the Board finds that he has met his burden of proof.

Appellant has established that this occupational disease claim was timely filed. The case will, therefore, be remanded for OWCP to address the merits of the claim, to be followed by a *de novo* decision.

### CONCLUSION

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

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<sup>11</sup> 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); *J.S.*, *supra* note 5; *see also Larry E. Young*, *supra* note 7.

<sup>12</sup> *J.S.*, *id.*; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

<sup>13</sup> *C.L.*, Docket No. 16-0854 (issued August 24, 2016); *James W. Beavers*, 57 ECAB 254 (2005). *Larry E. Young*, *supra* note 7; *Linda J. Reeves*, 48 ECAB 373 (1997).

<sup>14</sup> *C.L. id.*; *R.A.*, Docket No. 16-0090 (issued March 21, 2016); *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 7, 2022 decision of the Office of Workers' Compensation Programs is reversed.

Issued: May 1, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

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

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