

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

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**J.L., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
Muscle Shoals, AL, Employer**

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**Docket No. 06-1380  
Issued: October 2, 2006**

*Appearances:*

*J.L., pro se*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge

DAVID S. GERSON, Judge

JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 16, 2006 appellant filed a timely appeal of an April 14, 2006 decision denying his request for a hearing before an Office of Workers' Compensation Programs' hearing representative. Pursuant to 20 C.F.R. § 501.3(d)(2), the Board has jurisdiction over decisions issued within one year of the filing of the appeal and therefore the Board's jurisdiction is limited to the denial of a request for hearing issue.

**ISSUE**

The issue is whether the Office properly denied appellant's request for a hearing as untimely under 5 U.S.C. § 8124(b).

**FACTUAL HISTORY**

On May 5, 2004 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss as result of his federal employment. The Office referred appellant to Dr. Benjamin Light, an otolaryngologist, for an opinion as to the extent of any noise-induced hearing loss. Dr. Light provided an October 4, 2004 report and accompanying audiogram with

an opinion that appellant had high frequency noise-induced hearing loss. An Office medical adviser reviewed the evidence and opined in an October 20, 2004 report that appellant had a 21 percent monaural hearing loss for the left ear.

By decision dated February 3, 2005, the Office issued a schedule award for a 21 percent hearing loss in the left ear. The award ran for 10.92 weeks from October 4, 2004.

In an undated letter, received by the Office on February 23, 2006, appellant requested an oral hearing.<sup>1</sup> Appellant argued that the test results from Dr. Light were not correct; he stated his hearing was getting worse and he did have hearing loss in his right ear. He submitted a narrative report discussing an April 2003 employing establishment audiogram.

Appellant's letter was forwarded to the Office's Branch of Hearings and Review on March 9, 2006. By decision dated April 14, 2006, the Office denied the request for a hearing on the grounds that it was untimely. The Office further advised appellant that the Branch of Hearings and Review had considered the request and found that the issue could equally well be addressed by requesting reconsideration.

### **LEGAL PRECEDENT**

The statutory right to a hearing under 5 U.S.C. § 8124(b)(1) follows the initial final merit decision of the Office. Section 8124(b)(1) provides as follows:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary....”

If the request is not made within 30 days or if it is made after a reconsideration request, a claimant is not entitled to a hearing as a matter of right.<sup>2</sup> The Board has held that the Office, in its broad discretionary authority in the administration of the Federal Employees' Compensation Act,<sup>3</sup> has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>4</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>5</sup>

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<sup>1</sup> The letter was sent to a London, Kentucky address that was provided in the February 3, 2005 decision as an address to request reconsideration.

<sup>2</sup> *Claudio Vazquez*, 52 ECAB 496 (2001); 20 C.F.R. § 10.616 (January 1999).

<sup>3</sup> 5 U.S.C. §§ 8101-8193

<sup>4</sup> *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>5</sup> *Claudio Vazquez*, *supra* note 2. See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.4(b)(3) (June 1997).

### **ANALYSIS**

The schedule award decision in this case was dated February 3, 2005. Appellant's undated letter asking for an oral hearing was sent to the address provided for reconsideration requests in the February 3, 2005 decision and was received by the Office on February 23, 2006. The date of the request is therefore February 23, 2006.<sup>6</sup> Since appellant must request a hearing within 30 days of the February 3, 2005 decision to be entitled to a hearing as a matter of right, the Board finds that the Branch of Hearings and Review properly found the request to be untimely.

The Branch of Hearings and Review must also exercise its discretion with an untimely hearing request to determine whether to grant a hearing. In this case, the Office exercised its discretion and declined to grant a hearing on the grounds that appellant could submit additional relevant evidence on the issue through the reconsideration process. This is considered a proper exercise of the Office's discretionary authority.<sup>7</sup> The Board finds that the Office properly denied the request for a hearing before an Office hearing representative in this case.

### **CONCLUSION**

The April 14, 2006 decision properly denied appellant's request for an oral hearing.

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<sup>6</sup> If the request is sent to the district Office instead of the Branch of Hearings and Review, and the postmark is not available, the date of the request is the date of receipt by the Office. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4 (June 1997).

<sup>7</sup> See *Mary E. Hite*, 42 ECAB 641, 647 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 14, 2006 is affirmed.

Issued: October 2, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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