

FACTUAL HISTORY

On July 16, 2014 appellant, then a 56-year-old sheet metal mechanic, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss as a result of noise exposure in his federal employment. On the claim form he noted that he first became aware of the condition and its relationship to employment on May 15, 2014.

Appellant submitted an employment history indicating that he worked in private employment from 1975 to 2003 in various positions that included heavy equipment operator, sheet metal mechanic and laborer. The employment history indicated that appellant began work at the employing establishment in 2003 as a sheet metal worker and he continued to work full time. Appellant also submitted an audiogram dated July 10, 2014.

The employing establishment submitted copies of audiograms from July 30, 2013 to April 21, 2014. In a letter dated August 18, 2014, it reported that appellant had a significant shift in the right ear baseline in a March 19, 2014 audiogram, and he was no longer exposed to industrial noise after March 19, 2014.

OWCP prepared a statement of accepted facts (SOAF) and referred appellant for a second opinion evaluation by Dr. Jackson Holland, a Board-certified otolaryngologist. In a report dated October 16, 2014, Dr. Holland provided a history and results on examination. He reported asymmetrical hearing loss, left ear worse than right. As to the right ear, Dr. Holland noted that review of the employing establishment audiograms showed a pattern consistent with a noise-induced hearing loss, but for the left ear, he opined that the present level of impairment was not related primarily to occupational noise exposure. He noted that it was likely related to a disease process unrelated to noise exposure at the employing establishment. Dr. Holland recommended a cranial magnetic resonance imaging (MRI) scan to determine the cause of the left ear hearing loss. The October 16, 2014 audiogram showed, for the right ear, decibel levels of 20, 20, 30, and 40 at frequencies of 500, 1,000, 2,000, and 3,000 hertz (Hz). respectively.

In a report dated November 18, 2014, an OWCP medical adviser reviewed Dr. Holland's report and opined that appellant had 3.75 percent monaural hearing loss in the right ear. He further opined that the evidence was insufficient to establish an employment-related left ear hearing loss, noting that Dr. Holland recommended further testing.

By decision dated January 15, 2015, OWCP issued a schedule award for four percent right ear hearing loss. The period of the award was 2.08 weeks from October 16 to 30, 2014.

On January 29, 2015 OWCP received a letter dated January 14, 2015 from appellant. The address on the letter was the Branch of Hearings and Review and appellant indicated that he wanted to appeal the denial of his claim for hearing loss in the left ear. Appellant indicated that he was enclosing a medical report. A memorandum of telephone call (CA-110) reported that he was sending in his appeal form, January 14, 2015 letter, and medical reports to both OWCP in London, Kentucky and to the Branch of Hearings and Review.

Appellant submitted the appeal request form on April 10, 2015, checking "reconsideration." In a March 31, 2015 letter, he again stated that he wanted to appeal the denial of his claim for the left ear, and stated that he was enclosing a medical report with respect to an

MRI scan. Appellant asserted that this was evidence supporting a finding of occupational hearing loss. No additional medical evidence was received by OWCP with the reconsideration request.

By decision dated April 21, 2015, OWCP declined to review the merits of the claim. It noted that appellant had not submitted a medical report with his application for reconsideration.

LEGAL PRECEDENT

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,³ OWCP's regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: "(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP."⁴ 20 C.F.R. § 10.608(b) states that any application for review that does not meet at least one of the requirements listed in 20 C.F.R. § 10.606(b)(3) will be denied by OWCP without review of the merits of the claim.⁵

ANALYSIS

In the present case, OWCP issued a schedule award on January 15, 2015 for four percent right ear monaural hearing loss. The Board notes that on January 29, 2015 OWCP received a letter dated January 14, 2015 from appellant, with a letterhead address for the Branch of Hearings and Review in Washington, DC. The date of the letter predates the January 15, 2015 schedule award decision. The letter does not identify the decision date or clearly indicate that a hearing or a review of the written record was being requested. It is also not clear whether the letter was actually sent to the Branch of Hearings and Review, as there is no Branch of Hearings and Review stamp. The evidence does not establish that appellant properly submitted a timely request for an oral hearing or review of the written record.

The actual appeal request form received on April 10, 2015 was for a reconsideration of the January 15, 2015 decision. When the underlying compensation issue is a schedule award, an initial question is whether the claimant has submitted an application for reconsideration or has requested an increased schedule award. Even if appellant has requested "reconsideration," if there is new and relevant evidence with respect to an increased permanent impairment, then a claimant may be entitled to a merit decision on the issue.⁶ When a claimant does not submit any relevant evidence with respect to an increased schedule award, then OWCP may properly determine that appellant has filed an application for reconsideration of a schedule award

³ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

⁴ 20 C.F.R. § 10.606(b)(3).

⁵ *Id.* at § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

⁶ *See* Linda T. Brown, 51 ECAB 115 (1999).

decision.⁷ In this case, appellant did not submit any relevant evidence with respect to an increased permanent impairment, and therefore OWCP properly considered appellant's submission as an application for reconsideration.

To require OWCP to reopen the case for a merit review, appellant must meet one of the requirements of 20 C.F.R. § 10.606(b)(3) as noted above. The Board finds he did not establish a merit review was warranted. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by OWCP. As noted above, although he referred to new medical evidence, he did not submit relevant and pertinent new evidence not previously considered by OWCP. Appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), and therefore OWCP properly denied the application for reconsideration.

On appeal, appellant states that an OWCP decision was issued before he was allowed to get an MRI scan as recommended by Dr. Holland. He can at any time request an increased schedule award and submit new and relevant evidence to OWCP on this issue.

CONCLUSION

The Board finds that OWCP properly denied appellant's application for reconsideration without merit review of the claim.

⁷ See *W.J.*, Docket No. 12-1746 (issued February 5, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 21, 2015 is affirmed.

Issued: October 23, 2015
Washington, DC

Christopher J. Godfrey, 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