

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY L. PADALINO and DEPARTMENT OF THE TREASURY,  
CUSTOMS SERVICE, Houston, TX

*Docket No. 00-2786; Submitted on the Record;  
Issued October 17, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and did not demonstrate clear evidence of error.

On March 12, 1991 appellant, a 42-year-old customs inspector, filed a claim for benefits, alleging that he sustained a hearing loss, tinnitus and dizziness causally related to factors of his federal employment. He stated that he first became aware of these conditions on August 8, 1977.

Appellant underwent audiologic and otologic evaluation by Deborah H. Carlson, Ph.d, and Dr. Francis B. Quinn, a Board-certified otolaryngologist, on August 5, 1991. Based on the results of the audiogram and findings on examination, these physicians determined that appellant had a 13 percent monaural hearing loss in his right ear and a 0 percent hearing loss in his left ear.

On September 22, 1991 an Office medical adviser reviewed the report from Drs. Carlson and Quinn and the audiogram taken for them and opined that appellant had a 13.2 percent monaural hearing loss in his right ear and a nonratable hearing loss in his left ear.<sup>1</sup>

By decision dated February 11, 1992, the Office granted appellant a schedule award for a 13.2 percent monaural hearing loss in his right ear.<sup>2</sup>

By letter dated March 16, 1992, appellant requested reconsideration.

By decision dated June 15, 1992, the Office denied the claim, finding that appellant failed to submit medical evidence sufficient to warrant modification of the previous decision.

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<sup>1</sup> On December 24, 1991 appellant filed a Form CA-7 claim for a schedule award based on a binaural hearing loss.

<sup>2</sup> The award was silent as to the left ear.

By letter dated August 7, 2000, appellant requested reconsideration. Accompanying the request was an October 16, 1997 letter signed by a representative of a hearing aids company; the letter was typewritten on a physicians' group association letterhead. It stated that appellant had a bilateral high frequency hearing loss and recommended that he be issued hearing aids.

By decision dated January 13, 2000, the Office denied reconsideration without a merit review, finding that appellant had not timely requested reconsideration and that the evidence submitted did not present clear evidence of error. The Office stated that appellant was required to present evidence which showed that the Office made an error and that there was no evidence submitted that showed that its final merit decision was in error. The Office, therefore, denied appellant's request for reconsideration because it was not received within the one-year time limit, pursuant to 20 C.F.R. § 10.607(b).

The Board finds that the Office improperly refused to reopen appellant's claim of further consideration of the merits under 5 U.S.C. § 8128(a) on the grounds that his request for reconsideration was not timely filed within the one-year time limitation period set for in 20 C.F.R. § 10.138(b)(2).

In its decision dated August 29, 2000, the Office treated appellant's claim that he had sustained increased hearing loss as a request for reconsideration of the Office's June 15, 1992 decision, which denied modification of its February 11, 1992 decision that appellant had a nonratable hearing loss. This was improper as appellant was not seeking reconsideration of the previous determination that his hearing loss was nonratable, but rather was informing the Office that he had an increased hearing loss.

The Board has long recognized that, if a claimant's employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment. The Board has also recognized that a claimant may be entitled to an award for an increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.<sup>3</sup> In addition, the Board has held that in cases where a claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence.<sup>4</sup> In the present case, appellant was clearly attempting to file a claim for increased hearing loss in his left ear; therefore, the Office should have considered whether he had sustained increased permanent impairment in the left ear due to employment-related factors.

As the Office has not determined appellant's entitlement to a schedule award for his claimed increased hearing loss, this case must be remanded to the Office for further development.

The decision of the Office of Workers' Compensation Programs dated August 29, 2000 is hereby set aside and the case is remanded to the Office for further development consistent with this opinion.

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<sup>3</sup> *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

<sup>4</sup> *Paul R. Reedy*, 45 ECAB 488 (1994).

Dated, Washington, DC  
October 17, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member