



caused or aggravated by his employment. Appellant submitted evidence with his claim that included records and reports.<sup>1</sup>

By letter dated October 1, 2002, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional factual and medical evidence supportive of his claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

By decision dated January 29, 2003, the Office denied appellant's claim based on appellant's failure to establish that his hearing loss was employment related.

By letter dated January 29, 2003, appellant requested reconsideration and enclosed an unsigned report dated March 14, 2002, which indicated that appellant had a change in his baseline hearing.

On February 20, 2003 the Office received a request for an oral hearing from appellant dated February 12, 2003.<sup>2</sup>

By decision dated March 11, 2003, the Office vacated the January 29, 2003 decision, finding that appellant provided sufficient documentation to support the factual portion of his claim. The Office indicated that they were reopening appellant's claim to schedule a second opinion evaluation to determine the extent, if any, of appellant's noise-induced hearing loss.

By decision dated November 26, 2003, the Office denied appellant's request for an oral hearing on the grounds that he had previously requested reconsideration and was therefore not entitled to a hearing as a matter of right and that the issue in the case, whether appellant's hearing loss was causally related to his employment, could be addressed equally well through a request for reconsideration and the submission of additional evidence.

### **LEGAL PRECEDENT**

Section 8124(b) of the Federal Employees' Compensation Act, concerning a claimant's entitlement to a hearing, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... 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."<sup>3</sup>

The Office regulations at section 10.616(a) provide that a claimant, injured on or after July 4, 1966, who has received a final adverse decision by the Office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by the postmark or other carrier's date marking) of the date of the decision for

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<sup>1</sup> The records included accident investigation reports and employee records, hearing evaluation results and audiogram records, medical history and reports.

<sup>2</sup> The envelope contained a February 13, 2003 postmark.

<sup>3</sup> 5 U.S.C. § 8124(b)(1).

which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>4</sup>

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing,<sup>5</sup> when the request is made after the 30-day period established for requesting a hearing,<sup>6</sup> or when the request is for a second hearing on the same issue.<sup>7</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.<sup>8</sup>

### ANALYSIS

In the present case, the Office properly determined in its November 26, 2003 decision that appellant was not entitled to a hearing as a matter of right since appellant's February 12, 2003 hearing request was made after he had previously requested reconsideration in connection with his claim.<sup>9</sup> The Office correctly informed appellant of his rights to a hearing, reconsideration, and an appeal with the Board in an enclosure with its original January 29, 2003 decision.

Regarding the Office's discretionary authority, the Office indicated that it had considered his request in relation to the issue involved and the hearing was denied on the basis that he could have the issue further addressed by submitting evidence on reconsideration. For these reasons, the Office acted properly in denying appellant's February 12, 2003 request for a hearing.

### CONCLUSION

The Board finds that the Office properly exercised its discretion in denying appellant's request for an oral hearing.

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<sup>4</sup> 20 C.F.R. § 10.616(a) (1999); *Brenton A. Burbank*, 53 ECAB \_\_\_\_ (Docket No. 00-2017, issued January 3, 2002).

<sup>5</sup> *Id.*

<sup>6</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>7</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>8</sup> *Sandra F. Powell*, 45 ECAB 877 (1994).

<sup>9</sup> On January 29, 2003 appellant had requested reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 26, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Issued: June 4, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member