

while working in the detail shop from 1996 to the present. He submitted audiograms from May 1981, September 1990 and April 9, 2004, which, he asserted, indicated that he sustained an employment-related bilateral hearing loss. The April 9, 2004 audiogram indicated that appellant sustained a 41.6 percent hearing loss in his right ear and 33.3 hearing loss in his left ear.

By letter dated May 28, 2004, the employing establishment controverted the claim. The employing establishment stated: (a) appellant did not timely file the claim since he was last exposed to factors to which he attributed his hearing loss in 1990, when he last worked for the employing establishment; (b) because the audiograms appellant submitted showed no hearing loss, it was not possible for the employing establishment to have any immediate, actual knowledge of the injury; and (c) while appellant may have experienced some exposure to loud noise while working around tools such as wagon drills and chipping tools, hearing aids had been provided to employees working in those areas since 1973.

By letter dated June 2, 2004, the Office informed appellant that the information he had submitted was not sufficient to establish an employment-related hearing loss. The Office requested additional medical and factual evidence from appellant within 30 days. Appellant did not submit any additional evidence.

On October 6, 2004 an Office medical adviser stated that appellant had submitted audiograms from May 1981 and September 1990 which showed normal hearing. Therefore, he found that appellant did not have a ratable, employment-related hearing loss.

In a decision dated December 23, 2004, the Office found that appellant had not sustained a ratable hearing loss causally related to factors of his federal employment.

In a letter received by the Office on January 18, 2005, appellant requested reconsideration. Appellant did not submit any additional medical evidence with his request.

By decision dated May 5, 2005, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of the Federal Employees' Compensation Act states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."¹ Section 8122(b) provides that, in latent disability cases, the time limitation 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 his employment and the compensable disability.² The statute provides an exception, which states that a claim may be regarded timely if an

¹ 5 U.S.C. § 8122(a).

² 5 U.S.C. § 8122(b).

immediate superior had actual knowledge of the injury within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.³

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim. The Board may raise the issue on appeal even if the Office did not base its decision on the time limitation provisions of the Act.⁴

ANALYSIS -- ISSUE 1

In the instant case, appellant last worked for the employing establishment in 1990; therefore, his injury was sustained at the latest, in 1990. Appellant stated that he first became aware he had sustained a hearing loss causally related to his employment in 1991. The time limitation for appellant's latent hearing loss therefore began to run in 1991. Appellant, however, did not file an occupational disease claim until April 12, 2004, which was not within the three-year time limitation set forth in the statute. The evidence does not indicate that appellant provided any notice of injury to his supervisor prior to this time, or that anything occurred to make his supervisor reasonably aware that he sustained an occupational disease or condition relating to his employment. As noted by the employing establishment, the audiograms performed during his employment were within the range of normal. The Board therefore finds that appellant failed to file his claim for hearing loss within the applicable time limitation provisions. The Board therefore affirms the December 23, 2004 Office decision denying appellant's claim for a schedule award based on hearing loss, but modifies the decision to find that appellant has not established that he filed a timely claim.

LEGAL PRECEDENT -- ISSUE 2

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶

ANALYSIS -- ISSUE 2

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by the Office. Appellant did not submit any additional medical evidence in connection with his January 18, 2005 reconsideration request. Thus, the request did not contain

³ 5 U.S.C. § 8122(a)(1); *see Eddie L. Morgan*, 45 ECAB 600 (1994); *Jose Sales*, 41 ECAB 743 (1990).

⁴ *Charles Walker*, 55 ECAB ____ (Docket No. 03-1732, issued January 8, 2004); *David R. Morey*, 55 ECAB ____ (Docket No. 04-967, issued August 16, 2004).

⁵ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).

any new and relevant evidence for the Office to review. In addition, appellant's reconsideration request contains arguments that are cumulative and repetitive of contentions that were presented and rejected by the Office in previous decisions. The Board finds that the Office properly refused to reopen appellant's claim for reconsideration.

CONCLUSION

The Board affirms the December 23, 2004 Office decision denying appellant's claim for a schedule award based on hearing loss. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2005 and December 23, 2004 decisions of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: May 2, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board