

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

J.F., Appellant

and

**DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD,
Philadelphia, PA, Employer**

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**Docket No. 08-79
Issued: April 7, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2007 appellant timely appealed the September 6, 2007 Office of Workers' Compensation Programs' nonmerit decision denying his request for an oral hearing. Because more than one year has elapsed from the most recent merit decision dated April 7, 2006 to the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether the Office properly denied appellant's request for an oral hearing as untimely filed.

FACTUAL HISTORY

On September 6, 2005 appellant, a 51-year-old former electronic technician, filed an occupational disease claim alleging that he sustained a hearing loss due to noise at the employing establishment. He stated that he first became aware of his condition in 1976. Appellant also filed a schedule award.

On November 1, 2005 the Office accepted appellant's claim for bilateral sensorineural hearing loss.

On April 7, 2006 the Office vacated the acceptance on the grounds that appellant's claim did not satisfy the timely filing requirement. The Office explained that appellant's last exposure to noise was in 1996 but he filed his claim on September 6, 2005 which exceeded the three-year filing requirement. The Office also noted there was no evidence that appellant participated in the Hearing Conservation Program or that the employing establishment had any notice of his hearing loss.

On August 4, 2007 appellant requested an oral hearing.

On September 6, 2007 the Office denied appellant's request for an oral hearing on the grounds that it was untimely and that the issue could equally be addressed by requesting reconsideration and submitting additional evidence that he notified his employing establishment within three years of his last exposure to the noise.

LEGAL PRECEDENT

Section 8124 of the Federal Employees' Compensation Act provides that a claimant is entitled to a hearing before an Office representative when a request is made within 30 days after issuance of an Office final decision.¹

Section 10.615 of Title 20 of the Code of Federal Regulations provides that a hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record.²

Section 10.616(a) of Title 20 of the Code of Federal Regulations further provides, a claimant, injured on or after July 4, 1966, who had received a final adverse decision by the district 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 postmark or other carrier's date marking) of the date of the decision for which a hearing is sought.³

Although a claimant may not be entitled to a hearing as a matter of right, the Office has discretionary authority with respect to granting a hearing and the Office must exercise such discretion.⁴

¹ 5 U.S.C. § 8124(b)(1).

² 20 C.F.R. § 10.615.

³ 20 C.F.R. § 10.616(a).

⁴ *Carolyn O'Neal*, 53 ECAB 645 (2002); *Herbert C. Holley*, 33 ECAB 140 (1981).

ANALYSIS

Appellant's request for review of the written record was untimely. The Office denied appellant's claim on April 7, 2006, and appellant's request for an oral hearing was postmarked August 4, 2007. Because appellant requested an oral hearing more than 30 days after the merit decision was issued, he is not entitled to a review as a matter of right. In its September 6, 2007 decision, the Office also denied appellant's request for an oral hearing on the grounds that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered which establishes that he notified his employing establishment within three years from the date of his last exposure to the noise. The Office exercised its discretionary powers in denying appellant's request for a hearing and, in so doing, did not act improperly.⁵ Moreover, there is no evidence in the case record to establish that the Office otherwise abused its discretion in denying appellant's oral hearing request. Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's request for a review of the written record.

CONCLUSION

The Board finds that the Office properly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 6, 2007 is affirmed.

Issued: April 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ *Mary B. Moss*, 40 ECAB 640, 647 (1989).