

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

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**R.D., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 15-1152  
Issued: September 4, 2015**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 27, 2015 appellant filed a timely appeal from a March 25, 2015 decision from a nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days elapsed from October 14, 2014, the date of the most recent OWCP merit decision, and the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review the merits of appellant's claim.

**ISSUE**

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

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On July 24, 2014 appellant, then a 54-year-old electrician, filed an occupational disease claim alleging a bilateral hearing loss in the performance of duty.

By letter dated August 1, 2014, OWCP notified appellant that evidence was insufficient to establish his claim. Appellant was advised to submit a questionnaire substantiating the factual element of his claim.

Appellant submitted an August 11, 2014 statement describing his employment history. He noted that he was still exposed to hazardous noise at work and that he had no hobbies that involved exposure to loud noise.

In an August 7, 2014 statement, the employing establishment advised OWCP of the sound level ranges in the areas where appellant worked. It noted that without a description of the exact work appellant performed it could not provide meaningful occupational noise exposure data for specific equipment, sites, or exposure periodicity. Without detailed information, the type of hearing protection used would remain unknown. The employing establishment also forwarded to OWCP annual audiograms from its hearing conservation program and a job description for appellant's position. On August 9, 2014 it advised that appellant was in the hearing conservation program and that he was still employed.

By letter dated August 29, 2014, OWCP notified appellant that he needed to provide further evidence regarding his employment history. Appellant was instructed to submit a statement listing his entire federal and nonfederal employment history including employer, job title, and inclusive dates. He was also advised that his claim would be denied if the requested information was not received in 30 days.

By decision dated October 14, 2014, OWCP denied appellant's claim for failure to establish that the claimed events occurred.

On December 22, 2014 appellant requested an oral telephone hearing.

In a March 25, 2015 decision, OWCP denied appellant's request for an oral hearing as untimely. It indicated that his letter of December 22, 2014 was beyond the 30-day time limitation to request an oral hearing and that the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

## **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides: "Before review under section 8128(a) of this title [relating to reconsideration], a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."<sup>2</sup>

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<sup>2</sup> *Id.* at § 8124(b)(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.<sup>3</sup> 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.<sup>4</sup> OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.<sup>5</sup> In such a case, it will determine whether to grant a discretionary hearing and, if not, will so advise the claimant with reasons.<sup>6</sup>

### **ANALYSIS**

The Board finds that OWCP properly determined that appellant's December 22, 2014 request for a hearing was not timely filed. Appellant's request was made more than 30 days after the issuance of the October 14, 2014 decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>7</sup> For this reason, OWCP properly denied his hearing as a matter of right.

OWCP properly exercised its discretion under Board precedent to determine whether to grant a hearing in this case. It denied appellant's request on the grounds that he could equally well address any issues in his case by submitting evidence not previously considered by OWCP and requesting reconsideration. OWCP correctly employed its discretionary authority and the Board finds that OWCP did not abuse its discretion in denying appellant's hearing request.<sup>8</sup>

On appeal appellant argues that he was exposed to loud noise at work and that he provided a full work history. The Board only has jurisdiction over the March 25, 2015 nonmerit decision which denied his request for an oral hearing.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely.

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<sup>3</sup> 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 10.616.

<sup>5</sup> *See G.W.*, Docket No. 10-782 (issued April 23, 2010). *See also Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *Id.* *See also Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>7</sup> *See William F. Osborne*, 46 ECAB 198 (1994).

<sup>8</sup> *See Lawrence C. Parr*, 48 ECAB 445 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 4, 2015  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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