



## **FACTUAL HISTORY**

On June 28, 2012 appellant, then a 58-year-old safety and occupational health specialist, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of performing his job duties. He became aware of his condition and realized that it was causally related to his employment on April 20, 2012. Appellant did not stop work.

By letter dated July 10, 2012, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It specifically requested that he substantiate the factual elements of his claim and respond to a questionnaire.

In a statement received on July 11, 2012, appellant noted that since June 2007 he had worked as a safety and occupational health specialist and he listed his employment and sources of noise exposure for periods since 1982.

Appellant submitted various employing establishment audiograms from 1981 to 2005 which revealed progressive bilateral high-frequency sensorineural hearing loss. He noted that during his employment from 1982 to the present time he was issued hearing protection in the form of earplugs and earmuffs.

By letter dated September 11, 2012, OWCP referred appellant to Dr. Meredith Pang, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. Dr. Pang performed an otologic evaluation of appellant on October 4, 2012 and audiometric testing was conducted on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000, and 3,000 revealed the following: right ear 15, 15, 15, and 10 decibels; left ear 15, 15, 15, and 20 decibels. Dr. Pang determined that appellant sustained very mild bilateral sensorineural hearing loss due to workplace exposure to hazardous noise. She noted that appellant was not a candidate for hearing amplification.

On November 20, 2012 an OWCP medical adviser reviewed Dr. Pang's report and the audiometric test of October 4, 2012. He concluded that in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*), appellant had bilateral high-frequency sensorineural hearing loss. The medical adviser calculated the schedule award and concluded that appellant had zero percent hearing loss in the right ear and zero percent hearing loss in the left ear and zero percent binaural hearing loss. He recommended that hearing aids not be authorized.

By decision dated December 14, 2012, OWCP accepted that appellant's claim for bilateral sensorineural hearing loss was due to workplace exposure to noise. The decision indicated that appellant would benefit from hearing aids and advised him of how to proceed if he wished to request authorization.

On January 2, 2013 appellant filed a claim for a schedule award (Form CA-7).

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

In a decision dated January 11, 2013, OWCP found that, although appellant's hearing loss was employment related, it was not severe enough to be considered ratable for purposes of a schedule award. It also found that the weight of the medical evidence did not establish that he would benefit from hearing aids.

In an undated statement received on February 12, 2016, appellant advised that he was following-up on his hearing loss claim and indicated that the December 14, 2012 decision noted that he would benefit from hearing aids but he had not been contacted by OWCP.

In a letter dated March 11, 2016, OWCP advised appellant that the January 11, 2013 decision noted that he was not a candidate for hearing aids. It attached a copy of the decision.

In an appeal request form dated March 20, 2016 and postmarked March 3, 2016, appellant requested a review of the written record by an OWCP hearing representative. In an accompanying letter, he indicated that he was appealing his claim based on the December 14, 2012 decision which noted his claim was accepted for hearing loss causally related to his employment. Appellant again stated that OWCP's decision noted that he would benefit from hearing aids and reiterated that he had not heard anything further about this claim due to his change in jobs.

In a decision dated May 20, 2016, OWCP denied appellant's request for a review of the written record as untimely filed. Appellant was informed that his case had been considered in relation to the issues involved, and that the request was further denied because the issues in this case could be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>3</sup> Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.<sup>4</sup> A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.<sup>5</sup> Although there is no right to a review of the written record or an oral hearing if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.<sup>6</sup>

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<sup>3</sup> 5 U.S.C. § 8124(b)(1).

<sup>4</sup> 20 C.F.R. §§ 10.616, 10.617.

<sup>5</sup> *Id.* at § 10.616(a).

<sup>6</sup> *Delmont L. Thompson*, 51 ECAB 155 (1999); *Eddie Franklin*, 51 ECAB 223 (1999).

### ANALYSIS

Appellant requested a review of the written record on March 23, 2016. This was more than 30 days after the January 11, 2013 OWCP decision. Section 8124(b)(1) is unequivocal on the time limitation for requesting a hearing.<sup>7</sup> Because the hearing request was not untimely filed, appellant was not entitled to a review of the written record as a matter of right.

OWCP has the discretionary power to grant an oral hearing or review of the written record when a claimant is not entitled to one as a matter of right. It exercised this discretion in its May 20, 2016 decision, finding that appellant's issue could be addressed by requesting reconsideration and submitting additional evidence. This basis for denying his request for a review of the written record is a proper exercise of OWCP's authority.<sup>8</sup> Accordingly, the Board finds that OWCP properly denied appellant's request for a review of the written record, as untimely filed.

On appeal, appellant claims that his hearing loss was directly related to his job and OWCP accepted his claim for work-related hearing loss. He also claims that he would benefit from the use of hearing aids. However, as noted, the Board does not have jurisdiction over the merits of the claim.

### CONCLUSION

The Board finds that OWCP properly denied appellant's request for a review of the written record, as untimely filed.

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

<sup>8</sup> *Mary B. Moss*, 40 ECAB 640, 647 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 20, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 27, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board