

FACTUAL HISTORY

Appellant, a 64-year-old retired welder, filed an occupational disease claim (Form CA-2) on January 5, 2016, alleging that he developed bilateral hearing loss causally related to factors of his federal employment. He stated that he first became aware that he had sustained hearing loss and related it to factors of his federal employment on January 1, 1983.²

By letter dated January 6, 2016, OWCP advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It afforded him 30 days to submit the requested information. Appellant did not submit any additional evidence.

By decision dated April 13, 2016, OWCP denied appellant's claim, finding that he failed to file a timely claim under section 8122. It noted that the date of injury was January 1, 1983 and that he filed his claim for compensation on January 5, 2016. OWCP further noted that there was no evidence that his immediate supervisor had actual knowledge within 30 days of the date of injury.

On May 16, 2016 appellant filed a request for a review of the written record by an OWCP hearing representative.

In a decision dated May 25, 2016, OWCP denied appellant's request for review of the written record as untimely filed pursuant to 5 U.S.C. § 8124. It informed appellant that his case had been considered in relation to the issues involved and that the request was further denied for the reason that the issue in this case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of FECA states, "An original claim for compensation for disability or death must be filed within three years after the injury or death."³ 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.⁴ The Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.⁵ A claim, however, would still be regarded as timely under section 8122(a)(1) of FECA if the 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.⁶

² A January 7, 2016 memorandum of telephone call indicates that appellant worked as a welder with the employing establishment at Puget Sound Naval Base from 1981 to 1983.

³ 5 U.S.C. § 8122(a).

⁴ *Id.* at § 8122(b).

⁵ *J.P.*, 59 ECAB 178 (2007); *Linda J. Reeves*, 48 ECAB 373 (1997).

⁶ *Id.*

ANALYSIS -- ISSUE 1

Appellant first became aware of his bilateral hearing loss condition and its relationship to his federal employment on January 1, 1983. The time limitation for filing the claim began to run on January 1, 1983, the date that appellant became aware of his bilateral hearing loss and its relationship to his employment.⁷ Appellant has acknowledged that he knew of the condition and the possible relationship to his employment since January 1, 1983. He has provided no factual or medical evidence indicating that he discovered a latent condition. Therefore, this is not a case in which appellant filed a claim within the time limitation. Since appellant did not file a claim until January 5, 2016, it was untimely filed within the three-year period of limitation.

In addition, there is no evidence of record indicating that his immediate supervisor had actual knowledge of the injury within 30 days, or that anything occurred to make his supervisor reasonably aware that appellant sustained an occupational disease or condition relating to his employment.⁸ The record therefore does not support that appellant satisfied this requirement.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

LEGAL PRECEDENT -- ISSUE 2

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.⁹ Section 10.615 of the federal regulations implementing this section of FECA provides that a claimant shall be afforded a choice of an oral hearing or a review of the written record.¹⁰ The 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.¹¹ A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.¹² A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which the hearing is sought.¹³ A claimant is not entitled to a hearing if

⁷ See *supra* note 2 at § 8122(b). See also *James W. Beavers*, 57 ECAB 254 (2005).

⁸ *Roger W. Robinson*, 54 ECAB 846 (2003).

⁹ 5 USC § 8124(b)(1).

¹⁰ 20 CFR § 10.615.

¹¹ *Id.* at § 10.616(a).

¹² 20 CFR § 10.615.

¹³ *Id.* at § 10.616(a).

the request is not made within 30 days of the date of the decision.¹⁴ OWCP has discretion, however, to grant or deny a request that is made after this 30-day period.¹⁵ In such a case, it will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.¹⁶

While a claimant may not be entitled to a hearing as a matter of right if the request is untimely, OWCP has the discretionary authority to grant the request and must properly exercise such discretion.¹⁷

ANALYSIS -- ISSUE 2

On May 20, 2016 OWCP received appellant's request for review of the written record. Because he did not request review within 30 days of the April 13, 2016 decision, appellant was not entitled to a hearing as a matter of right under section 8124(b)(1). OWCP considered whether to grant a discretionary review and correctly advised appellant that his case had been considered in relation to the issue involved and that the request was further denied for the reason that the issue in the case could be addressed by requesting reconsideration from the district office and submitting evidence not previously considered.

CONCLUSION

The Board finds that appellant did not file his compensation claim within the applicable time limitation provisions of FECA. The Board further finds that OWCP did not abuse its discretion in denying appellant's request for a review of the written record.

¹⁴ *James Smith*, 53 ECAB 188 (2001).

¹⁵ 20 CFR § 10.616(b).

¹⁶ *Supra* note 14.

¹⁷ *See id.*; *Cora L. Falcon*, 43 ECAB 915 (1992); *Mary B. Moss*; 40 ECAB 640 (1989); *Rudolph Bermann*, 26 ECAB 354 (1975).

ORDER

IT IS HEREBY ORDERED THAT the May 25 and April 13, 2016 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 9, 2017
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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