

FACTUAL HISTORY

On August 2, 2017 appellant, then a 66-year-old retired aircraft mechanic, filed an occupational disease claim (Form CA-2) for binaural hearing loss and tinnitus, which he attributed to factors of his federal employment that included working in a noisy aircraft repair facility, exposure to jet engine noise, exposure to tool noise, and exposure to high noises in a constant surrounding.² He first became aware of his condition and first realized that his condition was caused or aggravated by factors of his federal employment on August 2, 2001.

OWCP received hearing conservation records from the employing establishment which included various audiograms and examination results dating back as early as 1974.

In an August 18, 2017 development letter, OWCP advised appellant that it would schedule a second opinion examination. In a separate development letter also dated August 18, 2017, OWCP requested additional information from the employing establishment regarding appellant's occupational noise exposure. It afforded the employing establishment 30 days to submit the requested evidence.

OWCP did not subsequently refer appellant for a second opinion examination, and the employing establishment did not respond to OWCP's August 18, 2017 development letter.

By decision dated February 2, 2018, OWCP denied appellant's occupational disease claim finding that the evidence of record failed to establish the implicated employment factors. It explained that appellant had not informed it of his claim for service-connected hearing loss with the Department of Veterans Affairs (VA). OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 8, 2018 appellant requested reconsideration and attached a personal narrative statement. He denied having claimed a hearing loss through the VA. He referenced "Enclosed VA ratings...."

By decision dated March 9, 2018, OWCP denied appellant's request for reconsideration, finding that he failed to raise substantive legal questions or include new and relevant evidence.³

On March 14, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and sent it to the OWCP of the Clerk of the Appellate Boards (OCAB). The Clerk of OCAB received the appeal request form on March 21, 2019, and subsequently directed it to the Branch of Hearings and Review, which acknowledged appellant's request on April 11, 2019.

By decision dated April 29, 2019, OWCP's Branch of Hearings and Review denied appellant's request for an oral hearing, noting that he had previously requested reconsideration under 5 U.S.C. § 8128 and; therefore, he was not entitled to a hearing on the same issue as a matter

² Appellant voluntarily retired effective October 2, 2006.

³ OWCP noted that while appellant's reconsideration request stated that he had enclosed supporting documentation, no additional documentation was received with the request for reconsideration.

of right. It also considered whether to grant a discretionary hearing, and found that the issue could equally well be addressed by requesting reconsideration and submitting evidence not previously considered which established that appellant sustained an injury in the performance of duty.

LEGAL PRECEDENT

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.⁴ A request for a hearing or review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought.⁵ OWCP regulations further provide that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁶ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁷ Similarly, the Branch of Hearings and Review may exercise its discretion to conduct a hearing or review the written record where a claimant requests a second hearing or review of the written record on the same issue.⁸

ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing.

OWCP initially denied appellant's occupational disease claim by decision dated February 2, 2018. Appellant timely requested reconsideration, which OWCP denied by its March 9, 2018 nonmerit decision. He then requested an oral hearing, which the Branch of Hearings and Review received on or about March 21, 2019.⁹

Appellant had previously requested reconsideration of OWCP's February 2, 2018 merit decision. As appellant previously requested reconsideration under section 8128 of FECA, he was not entitled to an oral hearing as a matter of right under section 8124(b)(1).¹⁰ OWCP properly exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of additional evidence.¹¹ Therefore, the

⁴ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

⁵ *Id.* at § 10.616(a).

⁶ *Id.*

⁷ *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁸ *S.H.*, Docket No. 17-1447 (issued January 11, 2018).

⁹ *See supra* note 5.

¹⁰ *J.H.*, Docket No. 17-1796 (issued February 6, 2018).

¹¹ *Id.*

Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing in its April 29, 2019 decision.

CONCLUSION

The Board finds that OWCP did not abuse its discretion in denying appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 16, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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