

	)	
<b>G.M., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0175</b>
	)	<b>Issued: February 3, 2025</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD, Bremerton, WA,</b>	)	
<b>Employer</b>	)	
	)	

*Case Submitted on the Record*

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 11, 2024 appellant filed a timely appeal from June 24 and September 20, 2024 merit decisions and an October 18, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether OWCP abused its discretion by denying appellant's request for replacement hearing aids; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On October 20, 2010 appellant, then a 59-year-old small craft operator, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of

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

his federal employment including working around loud noises. He indicated that he first realized his condition and that it was related to the factors of his federal employment on July 24, 2003. Appellant did not stop work. OWCP accepted the claim for bilateral sensorineural hearing loss.

On April 20, 2011 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated May 2, 2011, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable. It further informed him that he was entitled to hearing aids, if recommended by his physician.

OWCP authorized hearing aids on September 23, 2014 and replacement hearing aids on October 4, 2017.

In a letter dated October 16, 2020, Kim A. Coy, a manager at a hearing aid clinic, noted that appellant had been previously fitted for hearing aids three years previously but had since lost them in the woods. She related that he was having difficulty with communication without his hearing aids and requested approval for a replacement pair. Ms. Coy also reviewed appellant's October 14, 2020 audiogram finding bilateral mild-low frequency sloping to moderately-severe high-frequency sensorineural hearing loss.

In a prescription note, appellant's attending physician, Dr. Richard Tanaka, a Board-certified family practitioner, recommended a hearing aid evaluation on February 15, 2024.

On February 16, 2024 Ms. Coy reviewed the findings of a hearing evaluation and hearing instrument consultation. She found that February 12, 2024 audiometric results<sup>2</sup> revealed a bilateral mild low-frequency sloping to severe high-frequency sensorineural hearing loss with speech discrimination of 88 percent on the left and 92 percent on the right. Ms. Coy found that appellant's hearing aids were three years old and were not working properly as both instruments were in poor condition. She requested replacement hearing aids.

In a February 22, 2024 development letter, OWCP informed appellant that the medical evidence of record was insufficient to support authorization of additional hearing aids. It further advised him to submit a report with medical rationale from his physician explaining if his hearing loss had increased due to current work-related exposures and of the five-year requirement contained in FECA Circular No. 23-08.<sup>3</sup> OWCP afforded appellant 30 days to provide the requested information. No additional evidence was received.

By decision dated June 24, 2024, OWCP denied authorization of replacement binaural hearing aids as the medical evidence did not establish that they were medically necessary and causally related to appellant's accepted employment injury.

On June 26, 2024 OWCP expanded acceptance of the claim to include bilateral noise effects on the inner ear.

---

<sup>2</sup> The signature on the audiometric evaluation is illegible.

<sup>3</sup> FECA Circular No. 23-08 (issued June 9, 2023).

On September 17, 2024 appellant requested reconsideration and asserted that his hearing aids were not working and out of warranty.

By decision dated September 20, 2024, OWCP denied modification.

On October 9, 2024 appellant requested reconsideration and asserted that his hearing loss had increased, that his current hearing aids were not functioning, and that he be provided a new pair of hearing aids.

By decision dated October 18, 2024, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103(a) of FECA<sup>4</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduces the degree, or the period of any disability, or aid in lessening the amount of any monthly compensation.<sup>5</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>6</sup>

In interpreting section 8103, the Board has recognized that OWCP has broad discretion in approving appliances, with the only limitation on OWCP's authority being that of reasonableness.<sup>7</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>8</sup> OWCP's procedures provide that hearing aids will be authorized when hearing loss has resulted from an accepted injury or disease if the attending physician so recommends. Maintenance of hearing aids provided by OWCP, including batteries, repairs, and replacements, may be authorized as needed.<sup>9</sup>

---

<sup>4</sup> 5 U.S.C. § 8103(a).

<sup>5</sup> See *J.S.*, Docket No. 22-0274 (issued September 13, 2022); *B.C.*, Docket No. 20-0566 (issued March 8, 2022); *R.P.*, Docket No. 17-0428 (issued April 19, 2018); *J.W.*, Docket No. 16-0231 (issued March 10, 2016); *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>6</sup> See *B.C.*, *id.*; *R.P.*, *id.*; *Kennett O. Collins, Jr.*, 55 ECAB 648 (2004); *Zane H. Cassell*, 32 ECAB 1537 (1981).

<sup>7</sup> See *B.I.*, Docket No. 18-0988 (issued March 13, 2020); see also *Daniel J. Perea*, 42 ECAB 214, 221 (1990) (abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>8</sup> *B.I.*, *id.*; *D.S.*, Docket No. 18-0353 (issued May 18, 2020); *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

<sup>9</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(2) (October 1990).

FECA Circular No. 23-08 (issued June 9, 2023) provides that effective July 15, 2023, OWCP would restrict the frequency of authorizations for replacement hearing aids to every five years. If a request is submitted prior to the five-year mark, OWCP will consider such requests on a case-by-case basis and require supporting documentation, including applicable medical records, the hearing aid warranty information for the previously authorized hearing aids, a detailed statement indicating why replacement is necessary, and a statement attesting to the fact that repair is either impossible or less cost-effective than the purchase of replacement hearing aids in accordance with 20 C.F.R. § 10.805(a).

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly denied appellant's request for replacement hearing aids.

Appellant requested authorization for replacement hearing aids. In a letter dated February 22, 2024, OWCP informed him that the medical evidence of record was insufficient to support authorization of replacement hearing aids and of the requirements of FECA Circular 23-08. It further advised appellant to submit a report with medical rationale from his physician explaining if his hearing loss had increased due to current work-related exposures.

In a February 15, 2024 prescription note, Dr. Tanaka recommended a hearing aid evaluation. The Board finds this report does not meet appellant's burden to show that he needed replacement hearing aids as Dr. Tanaka did not review any audiometric testing, and therefore, did not explain why the replacement hearing aids were medically necessary.<sup>10</sup> This report, consequently, is insufficient to establish that the requested medical devices should be authorized.<sup>11</sup>

OWCP also received reports from Ms. Coy, a clinic manager, and an audiometric evaluation with an illegible signature. The Board has held that medical reports signed by a lay person, or an audiologist are of no probative value, because only the reports of physicians as defined under FECA constitute competent medical evidence.<sup>12</sup> Consequently, audiological and Ms. Coy's findings and/or opinions will not suffice for the purpose of establishing entitlement to FECA benefits.<sup>13</sup> Accordingly, these reports are insufficient to establish the claim.

---

<sup>10</sup> *A.E.*, Docket No. 23-0470 (issued September 5, 2023); *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.M.*, Docket No. 19-0563 (issued August 1, 2019).

<sup>11</sup> *Id.*

<sup>12</sup> Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *B.J.*, Docket No. 24-0430 (issued June 5, 2024); *I.J.*, Docket No. 20-0812 (issued October 19, 2020) (an audiologist is not considered a physician as defined under FECA).

<sup>13</sup> *Id.*

As noted, the only restrictions on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>14</sup> In the instant case, appellant has not submitted medical evidence to support that the requested replacement hearing aids were medically necessary as his hearing aids had been replaced within the previous five years. The Board, thus, finds that OWCP did not abuse its discretion by denying appellant's request for replacement hearing aids.<sup>15</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128 (a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>16</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>17</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>18</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>19</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>20</sup>

---

<sup>14</sup> *S.K.*, Docket No. 20-1348 (issued May 3, 2022); *see also E.F.*, Docket No. 20-1680 (issued November 10, 2021) (the Board found that OWCP did not abuse its discretion when the claimant failed to submit evidence to support that the requested medical service was medically necessary to treat her accepted conditions).

<sup>15</sup> *S.K.*, *id.*; *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *B.J.*, Docket No. 17-1825 (issued February 23, 2018).

<sup>16</sup> 5 U.S.C. § 8128(a); *see M.S.*, Docket No. 19-1001 (issued December 9, 2019); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *W.C.*, 59 ECAB 372 (2008).

<sup>17</sup> 20 C.F.R. § 10.606(b)(3); *see also E.W.*, Docket No. 19-1393 (issued January 29, 2020); *L.D.*, *id.*; *B.W.*, Docket No. 18-1259 (issued January 25, 2019).

<sup>18</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (September 2020). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>19</sup> *Id.* at § 10.608(a); *see also Y.H.*, Docket No. 18-1618 (issued January 21, 2020); *R.W.*, Docket No. 18-1324 (issued January 21, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>20</sup> *Id.* at § 10.608(b); *D.C.*, Docket No. 19-0873 (issued January 27, 2020); *M.S.*, Docket No. 19-0291 (issued June 21, 2019).

## **ANALYSIS -- ISSUE 2**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

In support of his October 9, 2024 request for reconsideration, appellant alleged that his hearing loss had increased and that his current hearing aids were not functional, and therefore, requested replacement hearing aids. However, he did not explain how OWCP erroneously applied or interpreted a specific point of law in its September 20, 2024 decision. Furthermore, appellant did not advance a relevant legal argument not previously considered by OWCP. Consequently, he is not entitled to a review of the merits of his claim based on the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board further finds that appellant has not provided relevant and pertinent new medical evidence not previously considered by OWCP. The underlying issue in this case was whether he has met his burden of proof to establish the need for replacement hearing aids, which is medical in nature. No new medical evidence was submitted by appellant with the October 9, 2024 request for reconsideration. Therefore, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board, accordingly, finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

## **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for replacement hearing aids. The Board further finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 24, September 20, and October 18, 2024 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: February 3, 2025  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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