United States Department of Labor
Employees' Compensation Appeals Board

J.G., Appellant	)	
and	)	**Docket No. 25-0790**
	)	**Issued: September 22, 2025**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Vicksburg, MS, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 20, 2025 appellant filed a timely appeal from a July 28, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument should be granted because he had been in and out of the hospital. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122(a).

FACTUAL HISTORY

On June 26, 2024 appellant, then a 73-year-old retired equipment operator, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including working in the plant and around cranes and motors. He noted that he first became aware of his hearing loss and realized its relation to his federal employment on July 1, 1991. Appellant retired effective September 20, 2020.

In support of his claim, appellant submitted a series of employing establishment audiograms performed as part of a hearing conservation program. A reference audiogram from January 15, 2012 revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 30, 45, 30, and 30 for the right ear, and 30, 40, 45, and 40 for the left ear, respectively. Prior to appellant's retirement, the most recent July 24, 2018, audiogram revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 25, 35, 20, and 30 for the right ear, and 45, 60, 20, and 25 for the left ear, respectively.

In a July 5, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for completion. OWCP afforded appellant 60 days to submit the requested evidence. In a separate letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of the employee's statements, and factual and medical evidence related to appellant's employment-related noise exposure in the course of his federal employment. OWCP afforded the employing establishment 30 days to respond. No response was received from either party.

In a follow-up letter dated November 13, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the July 5, 2024 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a separate letter dated November 13, 2024, OWCP again requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of the employee's statements, and factual, and medical evidence related to appellant's employment-related noise exposure in the course of his federal employment. OWCP afforded the employing establishment 30 days to respond.

In a statement dated December 3, 2024, appellant indicated that he was exposed to work-related hazardous noise on the floating plant's mat sinking unit and reel alley areas, from heavy machinery such as cranes, horns, the impact of concrete falling to the steel floating plant deck, and to noise from hydraulic gears while in a confined space. Appellant explained that he worked 10- to 14-hour shifts for up to 12 consecutive days. He contended that no hearing protection was

provided in the early years of his employment. Appellant noted that he had submitted employing establishment audiograms and had retired in September 2020.

In a December 8, 2024 statement, the employing establishment confirmed that, commencing in 1991, appellant had been exposed to noise from cranes and winches on top of the floating plant, and to noise from gears and hydraulic pumps in the "reel alley" and "figure eight" room located under the plant. Appellant had been "exposed to sound well above 90 decibels" for 10 to 12 hours a day. Hearing protection was not issued until 2009.

On January 7, 2025 OWCP referred appellant, together with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Laura E. Christopher, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated February 15, 2025, Dr. Christopher reviewed a January 30, 2025 audiogram which revealed dB losses at 500, 1,000, 2,000, and 3,000 Hz of 50, 55, 65, and 70 for the right ear, and 75, 85, 80, and 90 for the left ear, respectively. Tympanometry was within normal limits. She diagnosed bilateral sensorineural hearing loss and bilateral tinnitus due to workplace exposure to hazardous noise. Dr. Christopher also found indications of acoustic neuroma or Meniere's Disease as appellant experienced episodes of vertigo, and his audiograms demonstrated fluctuating hearing loss in both ears with low tone shifts. She recommended a magnetic resonance imaging (MRI) scan with gadolinium contrast due to further assess appellant's bilateral, fluctuating, asymmetrical hearing loss. In a February 11, 2025 worksheet, Dr. Christopher applied OWCP's standard for evaluating hearing loss to the January 30, 2025 audiogram and determined that appellant had 55 percent binaural hearing impairment. She also completed a tinnitus handicap inventory (THI) worksheet and rated the tinnitus diagnosis at five percent based on appellant's self-rating at 100 percent. Dr. Christopher indicated that appellant had not yet reached maximum medical improvement (MMI). Hearing aids were recommended.

In a February 18, 2025 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In response to the development letter, on February 19, 2025 appellant advised that the report from the second opinion physician established his claim.

By decision dated July 28, 2025, OWCP denied appellant's claim, finding that he had not timely filed his claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time

[3] *See R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.[6] In cases of injury on or after September 7, 1974 section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.[7] 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 the employment and the compensable disability.[8] 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.[9]

In an occupational disease claim, the time for filing a claim begins to run when the employee first becomes aware, or reasonably should have been aware, of a possible relationship between his or her condition and his or her federal employment. Such awareness is competent to start the limitation period even though the employee does not know the precise nature of the impairment or whether the ultimate result of such affect would be temporary or permanent.[10]

Even if a claim is not filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his or her alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119.[11] The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[12] The Board has held that a program of periodic audiometric examinations conducted by an employing establishment in conjunction with an employee testing program for hazardous noise exposure is sufficient to

[4] *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *R.S.* Docket No. 24-0419 (issued May 22, 2024); *C.D.*, 58 ECAB 146 (2006); *David R. Morey*, 55 ECAB 642 (2004); *Mitchell Murray*, 53 ECAB 601 (2002); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

[7] *Supra* note 2 at § 8122(a). *See also S.F.*, Docket No. 19-0283 (issued July 15, 2019); *W.L.*, 59 ECAB 362 (2008); *Gerald A. Preston*, 57 ECAB 270 (2005); *Laura L. Harrison*, 52 ECAB 515 (2001).

[8] *Id.* at § 8122(b).

[9] *See G.M.*, Docket No. 18-0768 (issued October 4, 2018); *Linda J. Reeves*, 48 ECAB 373 (1997).

[10] *See A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

[11] *Supra* note 2 at §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young, id.*

[12] *R.S., supra* note 6; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

constructively establish actual knowledge of a hearing loss, such as to put the immediate supervisor on notice of an on-the-job-injury.[13] A hearing loss identified on such a test would constitute actual knowledge on the part of the employing establishment of a possible work injury.[14]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that he timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122(a).

On June 26, 2024 appellant filed a Form CA-2, noting that he first became aware of his condition and realized its relationship to his federal employment on July 1, 1991. Under section 8122(b), the time limitation begins to run when he became aware of causal relationship, or, if he continued to be exposed to noise after awareness, the date he is no longer exposed to noise.[15] Appellant retired from federal employment on September 20, 2020. Therefore, the three-year time limitation began to run on September 20, 2020, his date of last exposure. As appellant did not file his occupational disease claim until February 21, 2024, the Board finds that it was not filed within the three-year time period under section 8122(b).[16]

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate supervisor had actual knowledge of the injury within 30 days of appellant's last exposure to hazardous noise in federal employment, *i.e.*, within 30 days of his last exposure no later than September 20, 2020.[17] The Board finds that the employing establishment conducted a hearing conservation program for which he submitted a series of audiograms obtained for the period July 18, 2012 through July 24, 2018, prior to his retirement. These audiograms, obtained as part of an employing establishment hearing conservation program, are sufficient to establish actual knowledge of the claimed hearing loss within 30 days of appellant's last noise exposure, which occurred no later than September 20, 2020.[18] The audiograms indicated a pattern of fluctuating bilateral hearing loss, with worsening on the left. As such, the Board finds that the hearing conservation program audiograms from July 18, 2012 through July 24, 2018 demonstrated a progressive worsening of appellant's hearing loss while still employed. The documented worsening of appellant's hearing loss constitutes actual knowledge by the employing establishment of a possible work-related hearing loss within 30 days of appellant's last noise exposure, which occurred no later than September 20, 2020.[19] Therefore, based on the audiometric

[13] *R.G.*, Docket No. 25-0001 (issued October 31, 2024); *C.D.*, Docket No. 24-0902 (issued September 30, 2024); *D.B.*, Docket No. 24-0274 (issued July 29, 2024); *L.B.*, Docket No. 12-1548 (issued January 10, 2013); *James W. Beavers*, 57 ECAB 254 (2005).

[14] *Id.*

[15] *Supra* note 2 at § 8122(b).

[16] *G.C.,* Docket No. 12-1783 (issued January 29, 2013).

[17] *Supra* note 2 at § 8122(b).

[18] *R.G.*, *supra* note 13; *C.D.*, *supra* note 13; *B.H., supra* note 12; *Willis E. Bailey, supra* note 12; *L.B., supra* note 13; *James W. Beavers, supra* note 13.

[19] *See D.B.,* Docket No. 24-0274 (issued July 29, 2024); *R.F.,* Docket No. 16-1398 (issued December 19, 2016).

test results from the employing establishment's hearing conservation program, his hearing loss claim is considered timely.[20]

The case shall, therefore, be remanded for OWCP to adjudicate the merits of the claim. Following this, and other such development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that he timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122(a).

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2025 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 22, 2025
Washington, DC

Alec J. Koromilas, 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

[20] *J.C.,* Docket No. 18-1178 (issued February 11, 2019); *L.B., supra* note 13; *James W. Beavers, supra* note 13.