

**United States Department of Labor
Employees' Compensation Appeals Board**

M.M., Appellant

and

**DEPARTMENT OF LABOR, BUREAU OF
LABOR STATISTICS, Philadelphia, PA,
Employer**

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**Docket No. 26-0618
Issued: August 17, 2026**

Appearances:

Sigmund Kozierachi, for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 8, 2025, appellant, through her representative, filed a timely appeal from a March 26, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).²

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant, through her representative, timely requested oral argument before the Board. 20 C.F.R. § 501.2(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 request for oral argument, her representative contended that OWCP failed to timely administratively combine OWCP File Nos. xxxxxx988 and xxxxxx653. 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.

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 3, 2023 appellant, then a 43-year-old economist, filed an occupational disease claim (Form CA-2) alleging that she developed hearing loss due to factors of her federal employment.⁴ She noted that she first became aware of her claimed conditions and realized their relation to factors of her federal employment on April 7, 2020. On the reverse side of the claim form, appellant's supervisor contended that appellant was attempting to file a new claim after her dissatisfaction with the decision in her prior claim.⁵ He noted that she first reported her conditions to a supervisor on April 7, 2020.

In a statement dated April 2, 2023, appellant contended that she sustained chronic ear disease and congenital hearing loss that worsened during the period October 2017 through April 1, 2021, based on an April 1, 2021 audiogram. She attributed her hearing loss to high exposure to consistent verbal communication and personal interaction up to 80 percent of the eight-hour workday, five days per week; reliance primarily on a significant amount of information verbally exchanged during conversational interviews where responses from respondents informed the direction and flow of an interview; extensive handwritten note taking and simultaneous verbal communication; and inability to compensate for hearing loss by reading lips which is a widely known necessity in deaf and hard of hearing culture.

On April 6 and May 8, 2023 OWCP received medical evidence including audiograms dated October 3, 2017, and April 1, 2021.

In a May 8, 2023 letter, appellant clarified that her claim was explicitly and solely for significant progression of physical hearing loss and impairment, and not for stress and anxiety.

In a development letter dated June 7, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual evidence needed, including evidence which established that her claim was filed within three years of the date of injury, or that her immediate supervisor had actual knowledge of the injury within 30 days of the injury. OWCP afforded

³ 5 U.S.C. § 8101 *et seq.*

⁴ Appellant also indicated on the claim form that she had developed anxiety disorder causally related to factors of her federal employment. However, she later clarified that she was only claiming an employment-related hearing loss.

⁵ OWCP assigned the present claim OWCP File No. xxxxxx653. Appellant has a prior occupational disease claim under OWCP File No. xxxxxx988, alleging that she sustained high-level anxiety, stress, fatigue, congestion, headache, and chest pains due to the employing establishment's failure to provide reasonable accommodations. OWCP denied appellant's claim for an emotional condition.

appellant 60 days to submit the necessary evidence. In a separate development letter of even date, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements, and factual and medical evidence related to appellant's employment-related noise exposure in the course of her federal employment. It afforded the employing establishment 30 days to respond.

In a letter dated July 12, 2023, C.C., a branch chief for the employing establishment, controverted the claim.

On July 29, 2023 appellant submitted a completed development questionnaire. She noted that effective April 8, 2020 she was on disability. Appellant further noted that she first noticed the worsening of her congenital hearing loss and its relation to her federal employment on November 20, 2017.

By decision dated September 26, 2023, OWCP denied appellant's occupational disease claim, finding that she had not timely filed her claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122. It determined that the evidence of record established that the date she first became aware of her conditions was November 20, 2017, and her claim was not filed until April 3, 2023. OWCP further determined that there was no evidence to establish that appellant's immediate supervisor had actual knowledge of the injury within 30 days of the date of injury.

On October 25, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP received an unsigned letter dated October 23, 2023, which indicated that appellant's initial date of exposure was November 17, 2017, but she continued to be exposed to hazardous workplace conditions until her termination on April 8, 2020. The letter concluded that her date of last exposure was April 7, 2020.

Following a preliminary review, by decision dated November 16, 2023, OWCP's hearing representative set aside the September 26, 2023 decision, and remanded the case to OWCP to request that the employing establishment clarify the date of appellant's last exposure to the alleged work factors. The hearing representative also ordered OWCP to administratively combine OWCP File Nos. xxxxxx653 and xxxxxx988. Following any further development deemed necessary, OWCP was to issue a *de novo* decision.

In a January 18, 2024 letter, OWCP requested that the employing establishment provide the date that appellant was terminated from employment, whether she was exposed to work factors on or after the referenced termination date, and the date of her last exposure to the alleged work factors.

OWCP subsequently received a notification of personnel action (Standard Form (SF) 50) dated April 8, 2020, which indicated that appellant was terminated from federal employment due to excessive absence, effective that date.

In a February 13, 2024 statement, C.C. explained that appellant's employment was terminated effective April 8, 2020. He noted that she was on leave status on the date of her termination as verified by her final timesheet. C.C. further noted that appellant was last

officially on work status, teleworking, on June 7, 2019. Appellant was on various types of leave between that date and her termination on April 8, 2020 with one brief exception. C.C. also noted that appellant presented to the employing establishment's location in Mountainside, New Jersey on February 24, 2020. When appellant's supervisor became aware of her presence at the worksite and her lack of physician approval to return to work, the supervisor asked her to cease work and leave the premises. C.C. related that appellant was nonetheless able to claim credit on her timesheet for six hours of time worked on February 24, 2020, as verified by her former supervisor and final timesheet.

By *de novo* decision dated March 13, 2024, OWCP denied appellant's occupational disease claim, finding that she had not timely filed her claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122. It determined that the date of her last workplace exposure was June 7, 2019, her last official date in work status. OWCP further determined that there was no evidence that appellant's immediate supervisor had actual knowledge of the claimed injury within 30 days of the date of injury.

On April 13, 2024 appellant, through her representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated April 22, 2024, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

On October 18, 2024 appellant, through her representative, requested reconsideration of the merits of the claim. In support thereof, appellant's representative submitted timesheet summary statements, which indicated that appellant was on leave without pay (LWOP) during the periods December 23, 2019 through January 3, 2020, and March 29 through April 8, 2020. He also submitted medical evidence.⁶

By decision dated March 26, 2025, OWCP denied modification.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 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.⁸ These are the essential elements of each and every

⁶ On October 28, 2024 OWCP administratively combined appellant's claims under OWCP File Nos. xxxxxx653 and xxxxxx988, with the latter serving as the master file.

⁷ *Supra* note 3; *see J.S.*, Docket No. 26-0074 (issued February 20, 2026); *R.B.*, Docket No. 18-1327 (issued December 31, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁸ *Y.K.*, Docket No. 18-0806 (issued December 19, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.¹⁰ 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.¹¹ 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.¹² 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.¹³

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.¹⁴

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 8119.¹⁵ The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.¹⁶ 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 constructively establish actual knowledge of a hearing loss, such as to put the immediate

⁹ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *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).

¹⁰ *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).

¹¹ 5 U.S.C § 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).

¹² *Id.* at § 8122(b).

¹³ *See G.M.*, Docket No. 18-0768 (issued October 4, 2018); *Linda J. Reeves*, 48 ECAB 373 (1997).

¹⁴ *See A.M.*, Docket No. 19-1345 (issued January 28, 2020); *Larry E. Young*, 52 ECAB 264 (2001).

¹⁵ *Supra* note 11 at §§ 8122(a)(1); 8122(a)(2); *see also Larry E. Young, id.*

¹⁶ *R.S.*, *supra* note 10; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

supervisor on notice of an on-the-job-injury.¹⁷ A hearing loss identified on such a test would constitute actual knowledge on the part of the employing establishment of a possible work injury.¹⁸

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122.

On her Form CA-2, appellant noted that she first became aware of her condition and realized its relation to factors of her federal employment on April 7, 2020. In her July 29, 2023 development questionnaire response, however, appellant admitted that she first noticed the worsening of her congenital hearing loss and realized its relation to her federal employment on November 20, 2017. Since she did not file her occupational disease claim until April 3, 2023, her claim was outside of the three-year time limitation period set forth in section 8122(a) of FECA and was therefore untimely.¹⁹

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if her immediate supervisor had actual knowledge of her injury within 30 days, or if written notice of injury was given to her immediate supervisor within 30 days of injury.²⁰ The case record does not contain evidence that appellant participated in a hearing conservation program or that an immediate superior either had actual knowledge of or received written or verbal notification about her condition and the possible relationship to her employment within 30 days of November 20, 2017. As the evidence of record is insufficient to establish actual knowledge by appellant's supervisor, the Board finds that appellant has not met her burden of proof to establish that she filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

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.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122.

¹⁷ *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).

¹⁸ *Id.*

¹⁹ *J.S.*, Docket No. 26-0074 (issued February 20, 2026); *R.H.*, Docket No. 21-1364 (issued April 5, 2022); *R.T.*, Docket No. 18-1590 (issued February 15, 2019).

²⁰ *J.S.*, *id.*; *L.H.*, Docket No. 19-0818 (issued December 9, 2019); *C.S.*, Docket No. 18-0009 (issued March 22, 2018). *But see D.A.*, Docket No. 22-0056 (issued May 9, 2023) (the medical report did not reference work factors).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 17, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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