United States Department of Labor
Employees' Compensation Appeals Board

J.S., Appellant	)	
and	)	**Docket No. 26-0074**
	)	**Issued: February 20, 2026**
DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, El Paso, TX, 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
JANICE B. ASKIN, Judge

JURISDICTION

On November 10, 2025 appellant filed a timely appeal from a May 21, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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(a).

FACTUAL HISTORY

On September 17, 2024 appellant, then a 70-year-old retired supervisory customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he

[1] 5 U.S.C. § 8101 *et seq*.

developed hearing loss due to factors of his federal employment, including firing rifles, pistols, and 12-gauge shotguns and working around loud vehicles. He noted that he first became aware of his hearing loss and realized its relation to his federal employment on November 9, 2018. On the reverse side of the claim form, the employing establishment controverted the claim, contending that it was untimely filed as appellant had retired effective January 3, 2015.

Appellant provided a June 27, 2024 report from Dr. Jorge J. Arango, a Board-certified otolaryngologist, which included a hearing examination which demonstrated bilateral moderate-to-severe neurosensory hearing loss in the high frequencies compatible with acoustic trauma. Dr. Arango related that appellant was exposed to loud noise at the employing establishment and opined that his bilateral hearing loss was "probably" all due to the work environment. He further diagnosed bilateral tinnitus and chronic rhinitis.

In a September 24, 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 such as a hearing conservation program. OWCP afforded the employing establishment 30 days to respond.

On October 7, 2024 M.G., an employing establishment supervisor, related that appellant retired in 2015, that she was not his supervisor, and that all his previous supervisors had retired. As such she was unable to provide any information about appellant's exposure to noise during his employment.

In an October 14, 2024 report, Dr. Maura Lappin, an osteopath Board-certified in occupational medicine, reviewed the case file on part of the employing establishment. She noted that the available medical records were extremely limited and lacked the essential documentation to determine the presence of occupational hearing loss.

In a follow-up letter dated October 24, 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 September 24, 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.

On November 22, 2024 appellant described his various positions with the employing establishment and the associated noise exposure. He asserted that he first became aware of his hearing loss on June 27, 2024 during Dr. Arango's examination. Appellant related that he had inadvertently used the date of November 9, 2018, as this was the date of his referral for a septoplasty.

On November 22, 2024 appellant provided an amended Form CA-2, which indicated that that he first became aware of his hearing loss and realized its relation to his federal employment on June 27, 2024. He denied any hobbies or outside activities that involve exposure to loud noises.

Appellant asserted that he incorrectly identified the date of November 9, 2018 as that on which he first became aware of his hearing loss and realized its relation to his federal employment due to effects of his medications.

In a development letter dated March 21, 2025, OWCP requested additional information from appellant regarding his hearing loss claim, including whether any audiograms were conducted. In a separate letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding whether appellant was required to undergo annual agency audiograms during his federal employment. OWCP afforded both parties 30 days to respond.

In an April 14, 2025 response, appellant asserted that he had undergone three audiograms on July 13, 2020, February 22, 2021, and May 2, 2024. He provided February 22, 2021 and May 2, 2024 audiological reports, which indicated that he had a known bilateral mild-to-moderate sensorineural hearing loss with accompanying constant ringing in both ears and a history of noise exposure.

In a May 6, 2025 report, Dr. Lappin reviewed the evidence of record and opined that Dr. Arango's June 27, 2024 report was insufficient to establish appellant's claim.

By decision dated May 21, 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[2] 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.[3] 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.[4]

The issue of whether a claim was timely filed is a preliminary jurisdictional issue that precedes any determination on the merits of the claim.[5] In cases of injury on or after September 7,

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

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

[4] *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).

[5] *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).

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.[6] 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.[7] 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.[8]

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.[9]

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.[10] The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.[11] 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 supervisor on notice of an on-the-job-injury.[12] A hearing loss identified on such a test would constitute actual knowledge on the part of the employing establishment of a possible work injury.[13]

ANALYSIS

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

---

[6] *Supra* note 1 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).

[7] *Id*. at § 8122(b).

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

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

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

[11] *R.S.*, *supra* note 5; *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey,* 49 ECAB 511 (1998).

[12] *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).

[13] *Id.*

Appellant filed an occupational disease claim on September 17, 2024 alleging that he developed hearing loss due to factors of his federal employment. He noted that he first became aware of the condition and of the relationship to his federal employment on November 9, 2018. The evidence of record establishes that appellant was last exposed to the factors of employment on January 3, 2015, the date he retired. Since he filed his initial occupational disease claim on September 17, 2024 his claim was filed outside of the three-year time limitation period set forth in section 8122(a) of FECA.[14]

Appellant filed an amended occupational disease claim on November 22, 2024, which indicated that he first became aware of his hearing loss and realized its relation to his federal employment on June 27, 2024 during examination by Dr. Arango. However, the record contains a February 22, 2021 audiological report which reveals that he had a known bilateral mild-to-moderate sensorineural hearing loss with accompanying constant ringing in both ears and a history of noise exposure. The Board thus finds that appellant was aware or reasonably should have been aware, of a possible relationship between his condition and his federal employment as of February 22, 2021.[15] As appellant did not file his claim within three years of his February 22, 2021 awareness of a possible relationship between his hearing loss and his federal employment, the Board finds that he has not established a timely claim.[16]

Appellant's claim would still be regarded as timely under FECA if his immediate supervisor had actual knowledge of his injury and any possible relation to his federal employment within 30 days, or if written notice of injury was given to his immediate supervisor within 30 days of injury.[17] The case record does not contain evidence that appellant participated in a hearing conservation program. On the reverse side of the September 17, 2024 claim form, the employing establishment controverted the claim, contending that it was untimely filed and noted that appellant first reported his condition on September 17, 2024. The case record does not contain any evidence documenting that an immediate superior either had actual knowledge of or received written or verbal notification about his conditions and the possible relationship to his employment within 30 days of its occurrence. As the evidence of record is insufficient to establish actual knowledge by appellant's supervisor of a work-related injury within 30 days the Board finds that he has not established a timely claim.

As such, the Board finds that appellant has not met his burden of proof to establish that he filed a timely claim for compensation, pursuant to 5 U.S.C. § 8122(a).

[14] *R.H.*, Docket No. 21-1364 (issued April 5, 2022); *R.T.*, Docket No. 18-1590 (issued February 15, 2019).

[15] *Supra* note 9.

[16] *L.M.,* Docket No. 24-0120 (issued March 15, 2024); *M.P.,* Docket No. 22-0937 (issued January 9, 2024); *S.H.*, Docket No. 22-0610 (issued October 21, 2022); *R.H.,* Docket No. 21-1364 (issued April 5, 2022); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

[17] *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).

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

ORDER

IT IS HEREBY ORDERED THAT the May 21, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2026
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board