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

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| **R.G., Appellant** | ) | |
| **and** | ) | **Docket No. 26-0630** |
| | ) | **Issued: September 23, 2026** |
| **DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL, Laredo, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*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 June 26, 2026 appellant filed a timely appeal from a June 22, 2026 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).

[1] 5 U.S.C. § 8101 *et seq.*

## ***FACTUAL HISTORY***

On June 17, 2025 appellant, then a 60-year-old retired border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and ringing in his ears due to factors of his federal employment, including qualifying with firearms quarterly, and working in trainyards, at traffic checkpoints, and around loud machines. He noted that he first became aware of his conditions on January 15, 1993, and realized their relation to his federal employment on February 20, 1994. On the reverse side of the claim form, I.T., a supervisory missionary support specialist, controverted the claim, contending that the claim was not filed within three years as required by FECA and noted that appellant first reported his condition on June 24, 2025.

In an undated letter, appellant described his positions and the associated noise exposure throughout his 27-year law enforcement career at the employing establishment. In 1989, he began working at the employing establishment at traffic checkpoints and train yards where he was consistently exposed to excessive noise from commercial vehicles, diesel engines, and train operations. In 2001, appellant transferred to Homeland Security Investigations, where he worked until his retirement in 2016. He reiterated that he was required to complete quarterly firearms qualifications, noting that he used standard-issued firearms at both indoor and outdoor ranges. Appellant also contended that he was repeatedly exposed to firearms and daily occupational noise from high-decibel environments, resulting in significant hearing loss.

Appellant submitted a June 9, 2025 audiogram.

In a development letter dated July 1, 2025, 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 appellant'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.

In a response dated July 11, 2025, appellant clarified that he had not been exposed to any hazardous noise since his retirement in 2016. He claimed that his hearing loss began during his employment and progressively worsened over time. Appellant explained that he did not file a claim earlier because he was not aware of the proper procedures for filing a claim at the time of his retirement.

In a July 8, 2025 letter received by OWCP on August 12, 2025, D.S., an employing establishment injury compensation specialist, contended that appellant's claim was not filed within three years as required by 5 U.S.C § 8122. He noted that the claim was filed on June 17, 2025, more than 32 years after the date of appellant's reported awareness of his condition. D.S. further noted that based on appellant's July 1, 2025 letter, his last date of exposure to the claimed employment factors was 2001, at least 24 years ago. Additionally, he related that there was no

indication that the employing establishment had received written notice of the claimed disease or illness within the filing period.

By decision dated August 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. It determined that the date of his last workplace exposure was the date of his retirement in 2016. 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 August 22, 2025, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A hearing was held on May 19, 2025. Appellant testified that the employing establishment did not conduct annual audiometric examinations.

By decision dated June 22, 2026, OWCP's hearing representative affirmed the August 21, 2025 decision.

## ***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, 1974 section 8122(a) of FECA provides that an original claim for compensation for disability or

[2] *Id*.; *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).

[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] *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).

[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).

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 timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122(a).

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[6] 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).

[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] 5 U.S.C. §§ 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 June 17, 2025, alleging that he developed hearing loss and ringing in his ears due to factors of his federal employment. He noted that he first became aware of the conditions on January 15, 1993, and realized their relationship to his federal employment on February 20, 1994. The evidence of record establishes that appellant was last exposed to the factors of employment in 2016, the year he retired. Since he filed his occupational disease claim on June 17, 2025, his claim was filed outside the three-year time limitation period set forth in section 8122(a) of FECA and was therefore untimely.[14]

Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate supervisor had actual knowledge of his injury within 30 days, or if written notice of injury was given to his immediate supervisor within 30 days of injury.[15] 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 his conditions and the possible relationship to his employment within 30 days of their 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 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).

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 timely filed a claim for compensation, pursuant to 5 U.S.C. § 8122(a).

[14] *J.S., supra* note 2; *B.S.,* Docket No. 23-0582 (issued September 14, 2023); *R.T.,* Docket No. 18-1590 (issued February 15, 2019).

[15] *M.M.,* Docket No. 26-0618 (issued August 17, 2026); *J.S., id.*; *L.H.,* Docket No. 19-0818 (issued December 9, 2019); *C.S.,* Docket No. 18-0009 (issued March 22, 2018).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the June 22, 2026 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 23, 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