United States Department of Labor
Employees' Compensation Appeals Board

R.G., Appellant	)	
and	)	**Docket No. 25-0001**
	)	**Issued: October 31, 2024**
DEPARTMENT OF THE NAVY, NAVAL BASE SAN DIEGO, San Diego, CA, 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 September 30, 2024 appellant filed a timely appeal from a September 9, 2024 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 has met his burden of proof to establish that he timely filed an occupational disease claim, pursuant to 5 U.S.C. § 8122.

FACTUAL HISTORY

On June 19, 2024 appellant, then a 67-year-old maintenance mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and tinnitus due to factors of his federal employment including exposure to repetitive noise. He noted that he first

[1] 5 U.S.C. § 8101 *et seq*.

became aware of his hearing loss and realized its relationship to his federal employment on February 16, 2007. On the reverse side of the form, the employing establishment indicated that appellant remained employed in his position as of June 19, 2024.

In support of his claim, appellant submitted employing establishment audiograms performed as part of a hearing conservation program dated February 8, 1994 through September 5, 2018. A baseline audiogram dated February 8, 1994 revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 10, 10, 25, and 25 for the left ear and 10, 5, 15, and 20 for the right ear, respectively. Hearing conservation data obtained on September 5, 2018 indicated the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 10, 10, 30, and 40 for the left ear and 15, 10, 25, and 35 for the right ear, respectively. Further, appellant submitted the results of independent audiometric testing from January 13, 2020 to January 13, 2021. In a report dated January 13, 2021, Dr. Sean Skelton, a Board-certified otolaryngologist, diagnosed binaural sensorineural hearing loss and tinnitus.

In a July 1, 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 his completion. OWCP afforded appellant 60 days to respond.

On August 2, 2024 appellant responded to OWCP's development questionnaire. He stated that he remained employed by the employing establishment as a maintenance mechanic, having begun work in that position as of December 2006, and that he continued to be exposed to hazardous noise from duties of his federal employment. Appellant listed the sources of hazardous noise to which he continued to be exposed five to eight hours each workday.

By decision dated September 9, 2024, OWCP denied appellant's claim, finding that he did not file a timely claim for compensation within the requisite three-year time limit provided under 5 U.S.C. § 8122. It found that the date he became aware of his condition was February 16, 2007, as indicated on his claim form, and noted that his claim was not filed within three years of the date of injury. OWCP further found that there was no evidence that appellant's immediate supervisor had actual knowledge of the injury within 30 days of the date of injury.

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,[3] 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

[2] *Id.*

[3] *L.S.*, Docket No. 20-0705 (issued January 27, 2021); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 constructively establish actual knowledge of a hearing loss, such as to put the immediate supervisor

[4] *L.S., id.*; *J.R.*, Docket No. 20-0496 (issued August 13, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *B.M.*, Docket No. 19-1341 (issued August 12, 2020); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *M.B.*, Docket No. 20-0066 (issued July 2, 2020); *Charles Walker*, 55 ECAB 238 (2004); *Charles W. Bishop*, 6 ECAB 571 (1954).

[7] 5 U.S.C. § 8122(a); *F.F.*, Docket No. 19-1594 (issued March 12, 2020); *W.L.*, 59 ECAB 362 (2008).

[8] *M.B., supra* note 6; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

[9] *Id.*

[10] *M.B., supra* note 6; *S.O.*, Docket No. 19-0917 (issued December 19, 2019); *Larry E. Young*, 52 ECAB 264 (2001).

[11] 5 U.S.C. §§ 8122(a)(1); 8122(a)(2); 8119(a), (c); *see also Larry E. Young*, *id.*

[12] *C.D.*, Docket No. 24-0902 (issued September 30, 2024); *B.H.*, Docket No. 15-0970 (issued August 17, 2015); *Willis E. Bailey*, 49 ECAB 511 (1998).

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 an occupational disease claim, pursuant to 5 U.S.C. § 8122.

On June 28, 2024 appellant filed a Form CA-2, noting that he first became aware of his condition and realized its relation to his federal employment on February 16, 2007. Under section 8122(b) of FECA, the time limitation began to run when he became aware of causal relationship, or, if he continued to be exposed to noise after awareness, the date he was no longer exposed to noise.[15] The case record establishes that appellant remained employed at the employing establishment at the time of the filing of his claim, and continued to be exposed to hazardous noise from a number of sources. The Board also notes that appellant's continuous participation in the employing establishment's hearing conservation program, and the employing establishment's audiograms which indicate a progression of hearing loss, establish that his immediate supervisor had actual knowledge of injury within 30 days.[16] As such, the Board finds that appellant's claim was timely filed within the three-year time period under section 8122(b) of FECA.[17]

The case shall, therefore, be remanded for OWCP to address the merits of the claim. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.[18]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that he timely filed an occupational disease claim, pursuant to 5 U.S.C. § 8122.

[13] *D.B.*, Docket No. 24-0274 (issued July 29, 2024); *T.R.*, Docket No. 21-1167 (issued April 4, 2022); *L.B.*, Docket No. 12-1548 (issued January 10, 2013); *James W. Beavers*, 57 ECAB 254 (2005).

[14] *J.L.*, Docket No. 23-0633 (issued January 18, 2024); *L.E.*, Docket No. 14-1551 (issued October 28, 2014).

[15] *Supra* note 1 at § 8122(b).

[16] *Id.*; *see also J.C.*, Docket No. 18-1178 (issued February 11, 2019).

[17] *See supra* note 15.

[18] *See T.R.,* Docket No. 21-1167 (issued April 4, 2022).

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2024 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: October 31, 2024
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