

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

J.O., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL AIR
SYSTEMS COMMAND, Cherry Point, NC,
Employer**

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**Docket No. 11-804
Issued: November 25, 2011**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On February 11, 2011 appellant filed a timely appeal from a November 18, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) rescinding acceptance of his claim for hearing loss and a January 6, 2011 nonmerit decision denying his request for reconsideration. He timely requested oral argument before the Board. The Board docketed the appeal as No. 11-804.

The Board has duly considered the matter and finds that the case is not in posture for decision. OWCP accepted appellant's December 2009 occupational disease claim for bilateral hearing loss under file number xxxxxx510. In a decision dated November 18, 2010, it rescinded acceptance of the claim. OWCP determined that the hearing loss claim assigned file number xxxxxx510 duplicated a previously accepted April 1998 hearing loss claim assigned file number xxxxxx353. It instructed appellant to request compensation and medical treatment under file number xxxxxx353.

On appeal appellant maintains that he did not know that he had a claim accepted in 1998 for bilateral hearing loss. The case record for file number xxxxxx353 is not part of the record. OWCP based its rescission on its finding that appellant's December 2009 hearing loss claim duplicated a prior hearing loss claim of April 1998 but the evidence used to justify rescission is

not contained in the current case record.¹ The absence of this evidence precludes the Board from properly reviewing OWCP's decision rescinding acceptance of appellant's hearing loss claim. As the case record submitted to the Board would not permit an informed adjudication of the case, the Board finds that the case is not in posture for decision and must be remanded to OWCP. On remand, OWCP should combine the present case record with the case record for file number xxxxxx353. Following this and any further necessary development, it should issue a *de novo* decision.²

IT IS HEREBY ORDERED THAT the January 6, 2011 and November 18, 2010 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: November 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹ In letters dated May 12 and October 7, 2010, OWCP informed appellant that it was attempting to obtain a copy of his 1998 claim from the Federal Records Center. Appellant requested a copy of the case record for file number xxxxxx353 on December 27, 2010 but OWCP advised him that he needed to contact the claims examiner associated with the 1998 case.

² Appellant's request for an oral argument before the Board is denied. Oral argument would serve no useful purpose given the Board's disposition of the issue on appeal.