

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

T.R., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 13-771
Issued: June 25, 2013**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On February 13, 2013 appellant filed a timely appeal from a November 5, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision which denied his claim for a schedule award due to hearing loss and a January 15, 2013 nonmerit decision; OWCP File No. xxxxxx228. The Board docketed the appeal as Docket No. 13-771.

The Board has duly considered the matter and finds that the case is not in posture for decision.

The record before the Board indicates that appellant has three separate claims for hearing loss due to his federal employment. The record further indicates that appellant received a schedule award for 12 percent binaural (both ears) hearing loss under File No. xxxxxx443.¹ OWCP further evaluated his permanent impairment due to hearing loss under File No. xxxxxx732 and denied an additional schedule award on July 31, 2009. Appellant filed a third occupational disease claim for hearing loss on March 14, 2012, File No. xxxxxx228, and a request for an additional schedule award on August 25, 2012.

¹ By decision dated March 4, 2002 in File No. xxxxxx443, the Board affirmed OWCP's refusal to reopen appellant's claim on the merits on the issue of whether appellant had greater than a 12 percent binaural loss of hearing, for which he received a schedule award. Docket No. 01-1646 (issued March 4, 2002).

An OWCP medical adviser reviewed the claim on October 17, 2012 and stated that appellant retired from federal employment on June 30, 2006.² He stated, “It is known that noise-induced hearing loss does not progress following removal from the noisy environment. Any increase in hearing loss after the date of retirement is not due to noise exposure encountered during [f]ederal employment.” The Board has long recognized that if a claimant’s employment-related hearing loss worsens in the future, he may apply for an additional schedule award for any increased permanent impairment. The Board has also recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.³ In *Adelbert E. Buzzell*,⁴ the Board cautioned against an OWCP medical adviser providing a blanket unrationalized statement that hearing loss does not progress following the cessation of hazardous noise exposure.⁵

The Board finds that OWCP did not properly develop the factual and medical evidence in this claim. OWCP improperly relied on the medical adviser’s blanket unrationalized statement that appellant’s employment-related hearing loss did not progress and OWCP failed to combine appellant’s hearing loss claims. Pursuant to its procedures, OWCP has determined that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. Therefore, for a full and fair adjudication, appellant’s claims should be doubled.⁶ On remand OWCP shall combine File Nos. xxxxxx228, xxxxxx732 and xxxxxx228 and following any further development deemed necessary, issue an appropriate decision.

² The Board notes that the limited documentation available from File No. xxxxxx732 indicates that appellant continued to be exposed to noise through June 11, 2009.

³ *J.R.*, 59 ECAB 710, 713 (2008).

⁴ 34 ECAB 96 (1982).

⁵ The Federal (FECA) Procedure manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(3) (January 2010) notes that if the progression of a noise-induced hearing loss is to be denied, the medical adviser must provide a well-reasoned opinion.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

IT IS HEREBY ORDERED THAT the January 15, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: June 25, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board