

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

M.S., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL AIR)
STATION FIRE DEPARTMENT, Meridian, MS,)
Employer)

**Docket No. 13-1024
Issued: January 14, 2014**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On March 19, 2013 appellant filed an application for review of a January 7, 2013 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), claim number xxxxxx646, denying his request for reconsideration as it was not timely filed and failed to establish clear evidence of error. The appeal was docketed as number 13-1024. The Board finds that this case is not in posture for a decision.

On June 24, 2006 appellant, then a 42-year-old firefighter (Hazmat/Emergency Medical Technician) filed an occupational disease claim alleging that his hearing loss was causally related to factors of his federal employment. The evidence submitted included a November 22, 2005 audiogram and a November 22, 2005 injury notification form, in which a registered nurse from the employing establishment diagnosed him with an occupational sensorineural hearing loss. Appellant did not respond to a subsequent OWCP development letter. By decision dated December 7, 2006, OWCP denied his claim on the grounds that he had not established that he sustained a hearing loss in the performance of duty. There was no further action taken until December 19, 2012, when appellant requested reconsideration. In his December 19, 2012 letter, appellant alleged that his October 31, 2005 traumatic injury claim involving his left ear was accepted by OWCP and that he believed the medical documentation and audio hearing information provided in that claim supports his hearing loss claim. Factual and medial

information were submitted. By decision dated January 7, 2013, OWCP denied appellant's reconsideration request on the grounds that his request was untimely filed and that he failed to present clear evidence of error on the part of OWCP.

A review of appellant's claim history reflects that under case number xxxxxx343, OWCP had accepted an October 31, 2005 traumatic injury claim. The record in the instant case, however, does not contain any development of appellant's claim in case number xxxxxx343.

In light of the fact that appellant had identified the same claimed hearing loss in his occupational disease claim as that of his accepted traumatic injury claim, it is essential for OWCP to consolidate this occupational disease claim with the traumatic injury claim to determine whether or not this is a duplicate claim. This will allow OWCP to consider all relevant claim files in developing appellant's claim. Moreover, to consider appellant's appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome.¹ Because it is essential for the Board to review the medical evidence contained in case number xxxxxx343 in order to render a full and fair adjudication of the present appeal, this case will be set aside and remanded to OWCP to consolidate case number xxxxxx646 with case number xxxxxx343. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.²

¹ See *William T. McCracken*, 33 ECAB 1197 (1982).

² On remand, OWCP should review the evidence in both case files to determine whether appellant's claim in claim number xxxxxx646 constitutes a claim for a new injury or is a duplicate of claim number xxxxxx343.

IT IS HEREBY ORDERED THAT the January 7, 2013 decision be set aside and the matter remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order.

Issued: January 14, 2014
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board