

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

D.B., Appellant

and

**DEPARTMENT OF THE AIR FORCE, AIR
FORCE NATIONAL GUARD, Phoenix, AZ,
Employer**

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**Docket No. 14-1269
Issued: September 18, 2014**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On May 13, 2014 appellant filed a timely appeal from a May 1, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his hearing loss claim for failing to establish fact of injury. The appeal was docketed as number 14-1269.

The Board has duly considered the matter and finds that the case is not in posture for decision.¹

On December 30, 2013 appellant, then an 83-year-old retired aircraft mechanic supervisor, filed an occupational disease claim (Form CA-2) alleging that he developed left ear hearing loss as a result of employment-related noise exposure. He was last exposed to employment-related noise on October 2, 1985, the day he retired from federal employment. Following his retirement from federal employment, appellant worked in an office and was not exposed to employment-related noise. He indicated that he noticed additional deterioration in his hearing and needed hearing aids for the left ear to balance the right ear hearing aid amplification. Noise dosimetry studies were submitted for areas in which appellant worked as an aircraft mechanic supervisor which revealed noise exposure in excess of 85 decibels. Appellant also

¹ T.R., Docket No. 13-771 (issued June 25, 2013).

submitted a November 21, 2013 audiogram and a December 18, 2013 report from Dr. Isabel Feinstein, a Board-certified otolaryngologist. Dr. Feinstein diagnosed sensorineural hearing loss, tinnitus and Eustachian tube obstruction. She opined that appellant's hearing loss was caused by his prior work-related noise exposure and recommended hearing aids.

By decision dated May 1, 2014, OWCP denied appellant's claim on the grounds that the evidence of record failed to establish fact of injury, namely, that the occupational noise exposure did not occur as alleged.

The record before the Board indicates that appellant had a prior hearing loss claim which was accepted by OWCP for work-related bilateral hearing loss on April 10, 1987, File No. xxxxxx450. Appellant was awarded a schedule award for 13 percent impairment of the right ear. His left ear hearing loss was not severe enough to be considered ratable. Appellant was also provided hearing amplification for the right ear only. In the May 1, 2014 OWCP decision, the claims examiner indicated that appellant's bilateral hearing loss claim was still open, File No. xxxxxx450.

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.² In *Adelbert E. Buzzell*,³ 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.⁴ The Board further notes that, following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.⁵

The Board finds that OWCP did not properly develop the factual and medical evidence in this claim. The Board notes that appellant has established fact of injury, namely, that he was exposed to employment-related noise. The claims examiner improperly made findings that appellant's increased hearing loss was not due to his federal employment because he retired in 1985. However, appellant's claim was previously accepted for bilateral hearing loss in File No. xxxxxx450. OWCP failed to combine appellant's hearing loss claim to determine whether he established increased employment-related hearing loss entitling him to an additional schedule award and hearing aids. Pursuant to its procedures, OWCP has determined that cases should be

² *J.R.*, 59 ECAB 710, 713 (2008).

³ 34 ECAB 96 (1982).

⁴ 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.

⁵ See *G.M.*, Docket No. 11-1295 (issued January 25, 2012); *F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.4003(d)(2) (October 1990).

combined when correct adjudication of the issues depends on frequent cross-reference between files.⁶ Therefore, for a full and fair adjudication, appellant's claims should be combined.⁷ On remand OWCP shall combine claim Nos. xxxxxx788 and xxxxxx450. Following this and any other further development deemed necessary, OWCP shall issue an appropriate decision on appellant's occupational disease claim.

IT IS HEREBY ORDERED THAT the May 1, 2014 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this decision of the Board.

Issued: September 18, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

⁶ *T.H.*, Docket No. 14-534 (issued June 13, 2014).

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).