

In a letter dated February 6, 2012, the employing establishment related that appellant worked from 1997 to 2010 and was “exposed to hazardous noises while performing vehicle maintenance repair functions.”²

The record contains an April 11, 2000 statement of accepted facts indicating that appellant filed a prior hearing loss claim, assigned file number xxxxxx426. The record further contains audiograms performed by the employing establishment dated February 9, 2001 to October 20, 2010 and accompanying hearing test notifications provided to appellant.

On October 15, 2012 OWCP referred appellant to Dr. R. Michael Loper, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated November 1, 2012, Dr. Loper indicated that an October 2007 audiogram revealed mild-to-severe hearing loss in the right ear and moderate-to-severe hearing loss in the left ear. He found that the hearing loss in the left ear was “likely due to other factors and a retrocochlear lesion should be ruled out.” Dr. Loper opined that the additional hearing loss was not more than would be expected with presbycusis. He diagnosed sensorineural hearing loss unrelated to noise exposure in the course of appellant’s federal employment. Dr. Loper stated, “[He] had existing hearing loss [in] October 11, 2007. Hearing has changed only slightly and can be attributed to presbycusis.”³

By decision dated January 15, 2013, OWCP denied appellant’s claim for hearing loss. It found that Dr. Loper’s opinion constituted the weight of the evidence and established that he did not have hearing loss due to noise exposure in the course of his federal employment.

On February 12, 2013 appellant requested a review of the written record by an OWCP hearing representative. Following a preliminary review, by decision dated April 4, 2013 an OWCP hearing representative vacated the January 15, 2013 decision. She found that OWCP previously accepted that appellant sustained bilateral hearing loss under file number xxxxxx426 and granted him a schedule award on February 28, 2002 for a 36 percent permanent impairment of the left ear. The hearing representative noted that OWCP did not inform Dr. Loper of the prior claim. She further determined that Dr. Loper discussed appellant’s hearing loss only from 2007 onward rather than considering audiograms from 2002 through 2010. The hearing representative instructed OWCP to amend the statement of accepted facts to show that appellant had received a prior schedule award for left hearing loss. She then found that OWCP should refer the case to an OWCP medical adviser for review, and, if necessary, obtain clarification from Dr. Loper regarding whether appellant is entitled to a schedule award for hearing loss.

On April 5, 2013 OWCP prepared a statement of accepted facts which included that it had accepted a prior hearing loss claim, with a date of injury of April 1, 1998, for left hearing loss due to noise exposure and bilateral sensorineural hearing loss under file number xxxxxx426.

In a report dated April 5, 2013, an OWCP medical adviser noted that Dr. Loper considered only audiograms in 2007 and 2012 in finding that appellant’s hearing loss was

² The employing establishment indicated on appellant’s claim form that he was last exposed to the conditions alleged to have caused his hearing loss on October 4, 2004. However, the February 6, 2012 letter clarifies that he was exposed to hazardous noise until 2010.

³ Dr. Loper referred appellant for a magnetic resonance imaging (MRI) scan study to rule out a cochlear lesion. A December 11, 2012 MRI scan study of the auditory canals was unremarkable.

unrelated to noise exposure. He recommended that OWCP provide Dr. Loper with audiograms from 2001 to 2012 and ask him to discuss whether any demonstrated hearing loss was employment related.

On April 16, 2013 OWCP requested that Dr. Loper review audiograms from 2001 through 2010 and address whether appellant sustained noise exposure due to his federal employment. In an April 18, 2013 response, Dr. Loper compared the results of audiograms taken on February 9, 2001 and October 20, 2010. He advised that appellant's hearing loss was "no more than would be expected on the basis of presbycusis."

On April 30, 2013 an OWCP medical adviser indicated that based on Dr. Loper's April 18, 2013 report, appellant was not entitled to an additional schedule award.

By decision dated May 7, 2013, OWCP denied appellant's claim for hearing loss. It found that the medical evidence did not establish hearing loss causally related to his accepted work exposure.

On January 20, 2014 appellant requested reconsideration. He argued that he sustained hearing loss due to employment on April 1, 1998. Appellant noted that in 2004 OWCP accepted his claim for bilateral hearing loss. He maintained that Dr. Loper did not know of his previously accepted employment-related hearing loss.

In a decision dated March 13, 2014, OWCP denied modification of its prior decision. It noted that appellant had previously received a schedule award for a 36 percent left hearing loss under file number xxxxxx426 and that it had authorized hearing aids.

LEGAL PRECEDENT

OWCP's procedure manual provides:

"Doubling is the combination of two or more case files. It occurs when an employee has sustained more than one injury and it is necessary to combine all of the records in one case folder. The case records are kept separately but travel under one claim number, which is known as the master file."⁴

Regarding when to double cases, OWCP's procedure manual states:

"Cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files. Cases meeting one of the following tests must be doubled:

(1) *A new injury case is reported* for an employee who previously filed an injury claim for a similar condition or the same part of the body. For

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc.⁵

(2) *Two or more separate injuries* (not recurrences) have occurred on the same date.

(3) *Adjudication or other processing* will require frequent reference to a case which does not involve a similar condition or the same part of the body. For instance, an employee with an existing claim for carpal tunnel syndrome files a new claim for a mental condition which has overlapping periods of disability.

OWCP procedures further provide that cases should be doubled as soon as the need to do so becomes apparent.⁶

ANALYSIS

The Board finds that the case is not in posture for decision. On February 10, 2012 appellant filed a claim for hearing loss due to factors of his federal employment. The record indicates that he had a previously accepted claim for hearing loss, assigned file number xxxxxx426. OWCP denied appellant's claim based on the November 1, 2012 report from Dr. Loper, an OWCP referral physician, finding that he did not have employment-related hearing loss. In a decision dated April 4, 2013, a hearing representative remanded the case for OWCP to amend the statement of accepted facts to include information about his prior hearing loss claim and schedule award received in 2002 for hearing loss. She further provided that OWCP should have its medical adviser and, if necessary, Dr. Loper, again address whether appellant sustained employment-related hearing loss. In its amended statement of accepted facts dated April 4, 2013, OWCP indicated that he had a claim accepted for bilateral sensorineural hearing loss and left hearing loss but did not include that he had received a schedule award for hearing loss. On April 16, 2013 OWCP asked Dr. Loper to review audiograms from 2001 to 2010 and clarify whether appellant sustained hearing loss due to noise exposure. It is not apparent from the record that OWCP ever provided Dr. Loper with the amended statement of accepted facts. In a response dated April 18, 2013, Dr. Loper advised that he had reviewed audiograms from 2001 to 2010 and that appellant's hearing loss was consistent with presbycusis. He did not evidence knowledge of the prior accepted hearing loss claim or previous schedule award for hearing loss.

Cases should be combined when correct adjudication of the issues depends on frequent cross reference between the files. As discussed, OWCP procedures provide for the doubling of a claim when a new injury case is reported for an employee who previously filed an injury claim for a similar condition for the same part of the body and also where two or more separate injuries (not recurrences) have occurred on the same date.⁷ As it has accepted bilateral hearing loss under file number xxxxxx426 but denied hearing loss in the instant case, for a full and fair

⁵ *Id.* at Chapter 2.400.8(c)(1).

⁶ *Id.* at Chapter 2.400.8.

⁷ *Id.*

adjudication of appellant's claims the files should be doubled. Additionally, OWCP relied in part upon evidence in file number xxxxxx426 but the Board cannot access this record on appeal. Consequently, as OWCP failed to properly associate the evidence from both files, the Board is unable to properly address and adjudicate the issues presented.⁸ The Board will remand the case to OWCP for doubling of file number xxxxxx426 with the current claim and further development of the medical evidence for a *de novo* decision as to whether appellant sustained additional employment-related hearing loss.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the March 13, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 25, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁸ See *Maynard D. Counts*, Docket Nos. 06-157 and 06-158 (issued July 12, 2006).