

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

W.S., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 15-0969
Issued: October 5, 2015**

Appearances:
David G. Jennings, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On March 20, 2015 appellant, through counsel, filed a timely appeal from a February 5, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP), claim number xxxxxx830. OWCP granted appellant a schedule award for 11 percent permanent impairment of binaural hearing loss.¹ The appeal was docketed as No. 15-0969.

The Board has duly considered the matter and finds that the case is not in posture for decision. On October 19, 2005 appellant filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. OWCP accepted appellant's claim for noise-induced binaural hearing loss on January 17, 2006. On June 19, 2013 appellant filed a claim for a schedule award. In its February 5, 2015 decision, OWCP granted appellant a schedule award for 11 percent binaural hearing loss, based on a December 12, 2005 report and accompanying audiometric testing from Dr. Richard Dawson, a Board-certified otolaryngologist, and an OWCP medical adviser's January 12, 2006 report. However, it appears that appellant also has another hearing loss claim pending before OWCP, claim number xxxxxx654, and that appellant underwent a second opinion examination in that

¹ The February 5, 2015 decision does not actually list a percentage of hearing loss. However, the number of weeks of compensation granted, 22, comports with 11 percent of the maximum number of weeks of compensation for a 100 percent, or complete loss of hearing, in both ears, 200 weeks. *See* 5 U.S.C. § 8107(c)(13)(b).

claim on March 14, 2013. The record for this other claim is not before the Board in the present appeal.

On appeal, appellant's counsel maintains that appellant is entitled to a greater impairment rating based on a March 14, 2013 second opinion evaluation. It appears that claim number xxxxxx654 contains evidence pertinent to the present claim. Under its procedures, OWCP has determined that cases should be combined where 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.² In the instant appeal, for a full and fair adjudication, appellant's hearing loss claims should be combined pursuant to OWCP's procedures. 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.³

Accordingly, the Board will remand the case to OWCP for doubling of claim number xxxxxx654 with the current claim number xxxxxx830. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for hearing loss.

IT IS HEREBY ORDERED THAT the February 5, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

³ See *William T. McCracken*, 33 ECAB 1197 (1982).

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Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board