

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

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**D.G., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
PARADISE FOSSIL PLANT, Chattanooga, TN,  
Employer**

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**Docket No. 15-0443  
Issued: September 11, 2015**

*Appearances:*  
*Ronald K. Bruce, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

On December 17, 2014 appellant, through his attorney, filed a timely appeal of a November 4, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

Appellant, then a 58-year-old heavy equipment operator, filed an occupational disease claim on April 13, 2013 alleging an employment-related loss of hearing. In support of his claim, he submitted a May 3, 2011 report from Dr. Linda Mumford, a Board-certified otolaryngologist, who had been designated as a second opinion physician in a separate hearing loss claim, assigned OWCP File No. xxxxxx612, in which OWCP had granted him a schedule award on June 7, 2011 for a 17 percent binaural sensorineural hearing loss.<sup>2</sup> Appellant contended that he had developed an additional hearing loss due to his employment duties after the issuance of his 2011 schedule award. In a letter dated June 18, 2013, OWCP noted that appellant was claiming an additional loss of hearing due to his work exposure and began further developing the claim.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board is unable to access claim number xxxxxx612.

On September 23, 2013 OWCP referred appellant and a statement of accepted facts for a second opinion examination with Dr. Andrew S. Mickler, a Board-certified otolaryngologist. In a supplemental report dated January 14, 2014, Dr. Mickler stated that appellant's current audiogram showed a bilateral sensorineural hearing loss. He added that the hearing loss did not appear to be employment related because there was no noise notch in either ear, which would be indicative of a noise-induced hearing loss. Dr. Mickler stated, "As far as the etiology of [appellant's] hearing loss, it is impossible to determine the exact cause as he would work for the [F]ederal [G]overnment for a few months and then he would work in the private sector for a few months."

By decision dated January 22, 2014, OWCP denied appellant's claim for hearing loss finding that the weight of the medical evidence established that appellant's loss of hearing was not causally related to his exposures during his federal employment. Counsel requested an oral hearing and, by decision dated November 4, 2014, an OWCP hearing representative affirmed the denial of appellant's claim, finding that there was no rationalized medical opinion evidence supporting a causal relationship between appellant's diagnosed hearing loss, and his employment-related noise exposures.

The Board, having duly considered the matter, finds that this case is not in posture for a decision. The Board concludes that to properly consider appellant's current claim for employment-related loss of hearing, appellant's hearing loss claims should be doubled. OWCP's procedures provide that cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files including a new injury claim for a similar condition or the same part of the body.<sup>3</sup> As OWCP has accepted binaural hearing loss under OWCP File No. xxxxxx612 but has denied hearing loss in the instant case, for a full and fair adjudication of appellant's claims the files should be doubled.<sup>4</sup> The Board will remand the case to OWCP for doubling of OWCP File No. xxxxxx612 with the current file. Following any further development of the medical evidence, OWCP shall issue a *de novo* decision as to whether appellant sustained additional employment-related hearing impairment entitling him to a greater schedule award.

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>4</sup> *R.A.*, Docket No. 14-1828 (issued February 25, 2015) (finding that OWCP should combine hearing loss claims when appellant previously received a schedule award and the current second opinion physician found his hearing loss was not employment related).

**IT IS HEREBY ORDERED THAT** the November 4, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 11, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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