

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

C.N., Appellant)	
)	
and)	Docket No. 19-1299
)	Issued: January 6, 2020
DEPARTMENT OF THE ARMY, U.S. ARMY)	
CORP OF ENGINEERS ST. LOUIS DISTRICT,)	
Granite City, IL, Employer)	
)	

Appearances:
Appellant, pro se
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
JANICE B. ASKIN, Judge

JURISDICTION

On May 23, 2019 appellant filed a timely appeal from a December 13, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1299.

On June 20, 2017 appellant, then a 57-year-old lock and dam equipment mechanic, filed a traumatic injury claim (Form CA-1) alleging that, on June 14, 2017, he sustained injury to his ears when he was changing a pipe fitting and the valve broke creating a loud release of air pressure while in the performance of duty.

In a report dated June 21, 2017, Dr. Christopher Knapp, Board-certified in aerospace medicine, family practice, and occupational medicine, related that appellant was seen for an injury to his ears which occurred at work when a pipe burst. He diagnosed bilateral tinnitus and acoustic trauma (explosive) to ear. Dr. Knapp cosigned a second clinic note of the same date which related

appellant's history of injury and noted that an audiogram performed that day revealed decibel (dB) losses beginning at the 500 Hertz frequency level.

In a letter dated July 3, 2017, appellant clarified that he had also experienced three separate, prior incidents of a loud release of air pressure while at work in August 2009 and February 2012, and on February 22, 2016.

In a report dated August 4, 2017, Lauren Felton, an audiologist, performed an audiological examination and attached an audiogram dated August 4, 2017.

In a report dated August 9, 2017, Dr. Knapp diagnosed tinnitus. He indicated that he referred appellant to an audiologist because the tinnitus had not improved since the June 21, 2017 examination. Dr. Knapp opined that loud noise could cause significant hearing loss and tinnitus, both with chronic exposure and with an acute acoustic trauma. He related that appellant had not demonstrated a loss of hearing, but did have subjective complaints of tinnitus following his noise exposure on June 14, 2017.

By decision dated September 26, 2017, OWCP denied appellant's claim finding that he had not submitted evidence containing a medical diagnosis in connection with the accepted June 14, 2017 employment incident.

In a report dated September 20, 2018, Dr. Michael Fedak, a Board-certified internist, diagnosed bilateral hearing loss. He noted that appellant had been exposed to loud noise several times while at work, and since the last episode on June 14, 2017, he experienced tinnitus. Dr. Fedak related that he also had some hearing loss, that his hearing loss had returned to near normal, but was now more profound. He concluded: "I would need undisputable evidence that the hearing loss is due solely to your statin and not due to prior noise trauma."

On September 21, 2018 appellant requested reconsideration of OWCP's September 26, 2017 decision.

In a report dated October 8, 2018, Dr. Steven West, a Board-certified otolaryngologist, noted that appellant was exposed to a loud burst of air in June 2017 and experienced immediate hearing loss and tinnitus in both ears. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus.

By decision dated December 13, 2018, OWCP affirmed, as modified, its September 26, 2017 decision finding that appellant submitted evidence sufficient to establish a diagnosed medical condition, but he had not submitted sufficient evidence to establish that his diagnosed condition was causally related to the accepted June 14, 2017 employment incident. It also noted that appellant "may wish" to file an occupational disease claim.

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

OWCP's procedures regarding development of a hearing loss claim relate in pertinent part that regarding acoustic trauma, OWCP does not require that the claimant show exposure to

injurious noise in excess of 85 dBs as a condition for approval of the claim. The procedures further explain that:

“(1) After obtaining all pertinent factual evidence, the CE will prepare a Statement of Accepted Facts (SOAF). Unless the case file already contains a reliable medical report which fully meets OWCP requirements, the CE should refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment.”¹

OWCP obtained relevant factual evidence and accepted that appellant was exposed to hazardous noise on June 14, 2017 in the performance of duty as alleged. Pursuant to its procedures, OWCP should therefore have prepared a SOAF. As appellant has alleged that he had previously experienced exposure to loud noise in three prior incidents and OWCP has suggested in its December 13, 2018 decision that appellant “may wish” to file an occupational disease claim, OWCP should clarify this aspect of the claim and determine whether the traumatic injury claim should be converted to a claim for occupational disease.

After preparation of the SOAF, pursuant to its procedures,² OWCP must refer appellant for audiological evaluation and otological examination to address causal relationship between any hearing loss and his accepted employment incident.

For these reasons, the case will be remanded to OWCP. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.600.8(a)(1) (September 1995).

² *Id.*

IT IS HEREBY ORDERED THAT the December 13, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order.

Issued: January 6, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board