

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

G.R., Appellant)	
)	
and)	Docket No. 21-0338
)	Issued: June 29, 2021
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, Employer)	
)	

Appearances:
Margaret Marshall, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On January 12, 2021 appellant, through counsel, filed a timely appeal from an August 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0338.

On May 14, 2020 appellant, then a 62-year-old electrician, filed an occupational disease claim (Form CA-2) alleging that he sustained increased hearing loss due to factors of his federal employment. OWCP assigned the claim OWCP File No. xxxxxx885.²

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² OWCP previously accepted a January 1, 2012 occupational disease claim for bilateral hearing loss and tinnitus under OWCP File No. xxxxxx268.

OWCP received an undated statement wherein appellant detailed his prior federal and nonfederal employment. Appellant indicated that he had previously filed a schedule award claim in 2014 for which he had received a schedule award for 22 percent binaural hearing loss.

Appellant submitted an audiogram dated March 4, 2020.

In a development letter dated May 21, 2020, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. Specifically, it stated that there was no diagnosis of any condition resulting from employment, nor a physician's opinion as to how appellant's employment activities caused or contributed to his diagnosed condition. OWCP requested that appellant submit copies of all audiograms taken while employed with the employing establishment. It afforded appellant 30 days to submit the necessary evidence.

In a letter dated June 25, 2020, counsel stated that reproduction and digitalization services were suspended until further notice due to the COVID-19 pandemic, and thus, appellant's audiogram records could not be obtained.

In a letter dated July 7, 2020, OWCP granted appellant an additional 30 days to submit the requested medical evidence.

In letters dated July 22 and August 14, 2020, counsel stated that the audiogram records were still not able to be retrieved.

By decision dated August 28, 2020, OWCP denied appellant's occupational disease claim in File No. xxxxxx885 as appellant had not submitted medical evidence containing a diagnosis causally related to the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files.³ For example, if 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, doubling is required.⁴ In the present claim, appellant alleged hearing loss. OWCP had previously accepted his claim for bilateral hearing loss under OWCP File No. xxxxxx268. However, evidence pertaining to that file is not part of the case record presented before the Board. For a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx885, with OWCP File No. xxxxxx268, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's current occupational disease claim. The Board will remand the case to

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000); *T.D.*, Docket No. 20-1119 (issued January 29, 2021); *R.R.*, Docket No. 19-0368 (issued November 26, 2019).

⁴ *Id.*; *M.B.*, Docket No. 20-1175 (issued December 31, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).

OWCP. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 28, 2020 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: June 29, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board