

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

R.C., Appellant)	
)	
and)	Docket No. 20-1671
)	Issued: May 6, 2021
DEPARTMENT OF THE AIR FORCE, HILL)	
AIR FORCE BASE, Clearfield, UT, Employer)	
)	

Appearances: *Case Submitted on the Record*
David J. Holdsworth, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

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

On September 28, 2020 appellant, through counsel, filed a timely appeal from a June 4, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1671.

On October 31, 2004 appellant, then a 50-year-old plastic worker, filed a notice of occupational disease (Form CA-2) alleging binaural hearing loss due to noise exposure, while in the performance of duty. OWCP accepted the claim on May 6, 2005 for binaural noise-induced hearing loss.

By decision dated August 16, 2005, OWCP granted appellant a schedule award for 14 percent binaural hearing loss.

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.

On September 29, 2018 appellant filed a claim for an additional schedule award (Form CA-7).

By decision dated May 16, 2019, OWCP granted appellant an additional schedule award for 31 percent binaural hearing loss.

On May 12, 2020 appellant, through counsel, requested reconsideration of the May 16, 2019 schedule award decision. In a letter accompanying the request for reconsideration, counsel argued that appellant had an increased hearing loss and tinnitus, based upon his December 4, 2019 audiogram and tinnitus handicap inventory. Counsel also argued that appellant lost his job at the employing establishment due to his accepted condition and that he had not been able to maintain other employment due to his hearing loss, therefore appellant was totally disabled from work due to his accepted injury.²

By decision dated June 4, 2020, OWCP denied appellant's reconsideration request, finding that the request did not raise substantive legal questions nor include new and relevant evidence.

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

The Board finds that OWCP did not make findings regarding the arguments counsel submitted in support of the reconsideration request.³ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁴ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁵ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁶ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁷

In denying appellant's April 27, 2020 reconsideration request, OWCP failed to analyze counsel's arguments on reconsideration. The June 4, 2020 decision simply noted: "your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our decision of our prior decision at this time."

² The referenced December 4, 2019 audiogram and tinnitus handicap inventory is not found in the case record.

³ See *J.K., Order Remanding Case*, Docket No. 20-0556 (issued August 13, 2020); *C.D., Order Remanding Case*, Docket No. 20-0450 (issued August 13, 2020); *T.B., Order Remanding Case*, Docket No. 20-0426 (issued July 27, 2020).

⁴ See *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁵ 5 U.S.C. § 8124(a).

⁶ 20 C.F.R. § 10.126.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

The Board will therefore set aside OWCP's June 4, 2020 decision and remand the case for an appropriate decision on appellant's reconsideration request, which describes the arguments submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.⁸ Accordingly,

IT IS HEREBY ORDERED THAT the June 4, 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: May 6, 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

⁸ 5 U.S.C. § 8124(a). All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).