

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

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<b>J.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1402</b>
	)	<b>Issued: January 11, 2023</b>
<b>DEPARTMENT OF TRANSPORTATION,</b>	)	
<b>FEDERAL AVIATION ADMINISTRATION,</b>	)	
<b>West Columbia, SC, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 24, 2021 appellant filed a timely appeal from an April 5, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1402.<sup>1</sup>

On October 16, 2007 appellant, then a 47-year-old aviation safety inspector, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. He noted that he first became aware of his condition and realized that it was caused or aggravated by his federal employment on September 17, 2007. Appellant did not stop work.

By decision dated February 13, 2008, OWCP accepted appellant's claim for binaural sensorineural hearing loss.

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<sup>1</sup> The Board notes that, following the April 5, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

OWCP received audiograms dated August 2, 2017, August 16, 2018, and July 26, 2019, a report of Dr. Sarang Yoon, an occupational medicine specialist dated August 20, 2019, and additional audiograms dated August 21, 2019, February 7, 2020, and February 19, 2021.

On February 25, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On March 29, 2021 OWCP referred the medical record and statement of accepted facts to Dr. Jeffrey Israel, Jr., Board-certified otolaryngologist, serving as an OWCP district medical adviser, to determine the extent of appellant's hearing loss and permanent impairment due to appellant's employment-related noise exposure. In a report dated March 30, 2021, he noted that he had reviewed a March 19, 2021 evaluation by Dr. Tab Thompson, a Board-certified otolaryngologist, and applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*),<sup>2</sup> in determining that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent.

By decision dated April 5, 2021, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

The Board has duly considered the matter and finds that the case is not in posture for decision. The record submitted to the Board is incomplete as the current record does not contain the letter referring appellant to Dr. Thompson, the accompanying list of questions, or his March 19, 2021 report.

Section 501.2(c) of the Board's *Rules of Procedure*<sup>3</sup> provides that the Board has jurisdiction to consider and decide appeals from the final decision of OWCP in any case arising under the Federal Employees' Compensation Act.<sup>4</sup> Because the record as transmitted to the Board is incomplete and would not permit an informed adjudication of the case,<sup>5</sup> the Board is unable to properly consider and decide appellant's claim. The case, therefore, is remanded to OWCP for reconstruction and proper assemblage of the record.<sup>6</sup> After such further development as deemed necessary, OWCP should issue a *de novo* decision on appellant's hearing loss schedule award claim.

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> 20 C.F.R. § 501.2(c).

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> *See G.B.*, Docket No. 20-0236 (issued October 9, 2020); *H.C.*, Docket No. 19-1976 (issued May 26, 2020); *D.H.*, Docket No. 17-0224 (issued August 16, 2018).

<sup>6</sup> *Id.*

**IT IS HEREBY ORDERED THAT** the April 5, 2021 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: January 11, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board