

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

M.S., Appellant)	
)	
and)	Docket No. 23-0118
)	Issued: February 21, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS & BORDER PROTECTION,)	
Brownsville, TX, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

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

On November 1, 2022 appellant filed a timely appeal from an October 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0118.

On February 18, 2022 appellant, then a 37-year-old customs and border protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment, including exposure to noise from exhaust systems, horns, and air brakes from automobiles and semi-trailer trucks. He noted that he first became aware of his condition on February 13, 2022 and realized its relation to his federal employment on February 17, 2022. Appellant did not stop work.

In support of his claim, appellant submitted audiograms dated January 20, 2009 and February 17, 2022.

On May 27, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), for a second opinion examination with Dr. Gregory S. Rowin, a Board-certified otolaryngologist, in order to determine whether appellant's work-related noise exposure was sufficient to have caused hearing loss, and if so, the extent and degree of his hearing loss. The

examination was scheduled to take place on June 21, 2022. Appellant did not attend the appointment.

By decision dated June 28, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted workplace noise exposure.

On July 14, 2022 appellant attended a rescheduled evaluation by Dr. Rowin.

On July 18, 2022 appellant requested reconsideration of the June 28, 2022 decision and indicated that the June 21, 2022 initial appointment had been canceled by Dr. Rowin's office.

OWCP thereafter received a July 14, 2022 report by Dr. Rowin, who noted that his review of the SOAF, performed an audiological evaluation and completed OWCP's evaluation questionnaire. Dr. Rowin reviewed an audiogram performed that day, which demonstrated at 500, 1000, 2000, and 3000 Hertz losses of 15, 5, 15, and 30 decibels (dBs) in the left ear, respectively, and 10, 0, 10, and 10 dBs in the right ear, respectively. He diagnosed mild high frequency bilateral sensorineural hearing loss, which he opined was due to occupational noise exposure.

By decision dated September 29, 2022, OWCP vacated the June 28, 2022 decision. By separate decision of even date, it accepted appellant's claim for bilateral sensorineural hearing loss.

Appellant then filed a claim for compensation (Form CA-7) for a schedule award.

In a letter October 7, 2022, OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, an OWCP district medical adviser (DMA) and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to his employment-related noise exposure. In an October 14, 2022 report, Dr. Israel 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*,¹ (A.M.A., *Guides*) and determined that appellant sustained a left monaural loss of zero percent, a right monaural loss of zero percent, and a binaural hearing loss of zero percent.

By decision dated October 28, 2022, OWCP summarily 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 finds that this case is not in posture for decision.

OWCP summarily denied appellant's schedule award claim without complying with the review requirements of FECA and its implementing regulations.² Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against

¹ A.M.A., *Guides* (6th ed. 2009).

² 20 C.F.R. § 10.607.

payment of compensation.³ 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.⁴ 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.⁵

In the October 28, 2022 decision, OWCP found that “after applying these standards [set forth in the sixth edition of the A.M.A., *Guides*] to the medical evidence in [appellant's] case, it has been found that your hearing loss is not severe enough to be considered ratable.” However, it provided no discussion relative to the evidence submitted.⁶

The Board therefore finds that OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, whether he had established that his accepted hearing loss condition was severe enough to be considered ratable.⁷ The case must therefore be remanded to OWCP to provide detailed reasons for accepting or rejecting the claim.⁸

Accordingly, the Board will set aside OWCP's October 28, 2022 decision and remand the case for findings of fact and a statement of reasons for its decision pursuant to the standard set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After any further development as OWCP deems necessary, it shall issue a *de novo* decision.

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ *E.H.*, Docket No. 21-1295 (issued April 25, 2022); *see also Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, K.K.*, Docket No. 19-0652 (issued September 19, 2019); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

⁷ *Supra* note 6.

⁸ *See A.J.*, Docket No. 21-0944 (issued March 23, 2022); *S.S.*, Docket No. 20-1351 (issued February 15, 2022).

IT IS HEREBY ORDERED THAT the October 28, 2022 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: February 21, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board