

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

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<b>T.D., widow of A.D., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 25-0338</b>
	)	<b>Issued: August 13, 2025</b>
<b>DEPARTMENT OF THE AIR FORCE, AIR EDUCATION &amp; TRAINING COMMAND, LAUGHLIN AIR FORCE BASE, TX, Employer</b>	)	
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*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

VALERIE D. EVANS-HARRELL, Alternate Judge

On February 18, 2025, appellant filed a timely appeal from a December 3, 2024<sup>1</sup> merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0338.

On October 27, 2000, the employee, then a 45-year-old aircraft painter, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss due to factors of his federal employment. OWCP accepted the claim for left ear hearing loss. By decision dated February 28, 2001, OWCP granted the employee a schedule award for 15 percent left ear (monaural) hearing loss.

On August 31, 2017, OWCP received an audiogram dated July 7, 2017.

On August 13, 2018, the employee filed a claim for compensation (Form CA-7) for an additional schedule award.

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<sup>1</sup> The Board notes that, while OWCP's December 3, 2024 letter was not accompanied by appeal rights, it constitutes a final adverse decision issued by OWCP. *K.K.*, Docket No. 19-0652 (issued September 19, 2019); *see Henry F. Dyer*, Docket No. 05-452 (issued May 13, 2005).

In a report dated November 14, 2018, Holly Spiser Foley, an audiologist, diagnosed bilateral sensorineural hearing loss due to noise exposure and tinnitus. She related that the employee's hearing loss had progressed since his initial impairment evaluation. She reviewed a July 7, 2017 audiogram and found a 26.25 percent right ear hearing loss, a 56.25 percent left ear hearing loss, and a 31.25 percent binaural hearing loss.

In a decision dated December 4, 2019, OWCP denied the employee's claim for an additional schedule award since he retired in 1999 and had no recent exposure to the same work factors.

On January 24, 2020, the employee requested reconsideration. He contended that he was not retired, explaining that he had been medically retired in 1999 but was brought back to work in 2005 through the return-to-work program and was currently still working.

In a July 7, 2021 report, Ms. Foley requested authorization for hearing aids. She attached a June 9, 2021 audiogram. The case record establishes that the employee passed away on April 23, 2024.

On November 15, 2024, appellant, the employee's widow, filed a Form CA-7 claiming an additional schedule on behalf of the deceased employee and submitted a copy of his death certificate.

By decision dated December 3, 2024, OWCP denied the appellant's claim for an additional schedule award finding that the employee retired in 1999 and was no longer exposed to the same work factors.

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

In the case of *William A. Couch*,<sup>2</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that OWCP did not consider and address Ms. Foley's July 7, 2021 report or the accompanying June 9, 2021 audiogram in its December 3, 2024 decision.<sup>3</sup> As such, it failed to follow its procedures.<sup>4</sup>

It is crucial that OWCP consider and address all evidence relevant to the subject matter received prior to the issuance of its final decision, as Board decisions are final with regard to the

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<sup>2</sup> 41 ECAB 548 (1990); *see also Order Remanding Case, J.R.*, Docket No. 21-1421 (issued April 20, 2022); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>3</sup> *See Order Remanding Case, C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>4</sup> OWCP's procedures provide that 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 2.1401.5b(2) (November 2012).

subject matter appealed.<sup>5</sup> As OWCP did not consider and address the above-noted evidence in its December 3, 2024 decision, the Board finds that this case is not in posture for decision.<sup>6</sup> On remand, OWCP shall review all of the evidence of record and, following any further development as deemed necessary, it shall issue *a de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the December 3, 2024 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: August 13, 2025  
Washington, DC

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

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

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

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<sup>5</sup> See *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, supra* note 2.

<sup>6</sup> See *Order Remanding Case, L.G.*, Docket No. 23-0637 (issued September 15, 2023).