

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

B.W., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY
ADMINISTRATION, Egg Harbor Township, NJ,
Employer**

**Docket No. 25-0585
Issued: August 27, 2025**

Appearances:
Jeffrey Zeelander, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On May 29, 2025 appellant, through counsel, filed a timely appeal from November 21, 2024 and May 28, 2025 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 an 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 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish hearing loss and bilateral tinnitus as causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On May 14, 2024 appellant, then a 61-year-old general inspection, investigation and compliance officer, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss and tinnitus due to factors of his federal employment, including exposure to aircraft noise and firearms. He noted that he first became aware of his condition and realized its relation to his federal employment on April 9, 2019. Appellant stopped work on December 30, 2022.

In a development letter dated June 4, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for completion. OWCP afforded appellant 60 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor regarding appellant's noise exposure and the type of ear protection provided. OWCP requested that the employing establishment respond within 30 days.

In a July 1, 2024 letter, the employing establishment controverted appellant's claim. It contended that the use of dual hearing protection was mandatory on all shooting ranges during training or qualifications and, when properly issued hearing protection was worn, there was no exposure to sound pressure levels exceeding 85 decibels (dBs) weighted over eight hours. The employing establishment additionally noted that sound pressure measurements in the interiors of an aircraft cabin do not approach regulatory action levels under Occupational Safety and Health Administration (OSHA) standards.

OWCP also received copies of audiograms dated May 25, 2005 through May 10, 2021 and a June 27, 2024 report from Dr. Maura Lappin, an osteopathic specializing in family medicine, who reviewed appellant's medical documentation, including the audiograms of record. Dr. Lappin opined that the available audiogram results did not establish the presence of an occupational hearing loss and, as such, there was no rationalized physician's opinion on file supporting occupational hearing loss.

In a July 14, 2024 statement, appellant described his work history and noise exposure during firearms training/qualification and when flying on an aircraft. He noted that hearing protection was provided for firearm training/qualifications, but it was not offered or utilized when flying on aircraft. Appellant also submitted a July 14, 2024 tinnitus handicap inventory (THI) worksheet.

On August 12, 2024 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF), to Dr. Stephen F. Freifeld, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated September 16, 2024, Dr. Freifeld diagnosed right minimal sensorineural hearing loss, left normal hearing, and bilateral subjective tinnitus. He opined that the isolated minimal right sensorineural hearing loss at 2,000 Hertz (Hz) was not due to noise exposure as it usually occurred from viral infections, even if appellant was unaware of it. Dr. Freifeld opined that the bilateral tinnitus was reasonably due to noise exposure over his multiple years with various firearms. In a September 16, 2024 worksheet, he applied OWCP's standard for evaluating hearing loss to the September 15, 2024 audiogram and determined that appellant had 0 percent binaural hearing impairment. Dr. Freifeld also completed a THI worksheet and rated the tinnitus diagnosis at five percent based on appellant's self-rating at 100 percent. He concluded that appellant reached maximum medical improvement (MMI) on September 16, 2024. Hearing aids were not recommended.

On October 28, 2024 OWCP referred the case record, along with a July 26, 2024 SOAF to Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), to determine whether appellant's diagnosed conditions resulted from employment-related noise exposure and, if so, whether there was any resulting permanent impairment.

In a November 1, 2024 report, Dr. Israel reviewed the SOAF and the medical records, including Dr. Freifeld's September 30, 2024 report and audiogram. He indicated that the serial audiograms over the years showed progressive sensorineural hearing loss (SNHL) in the right 2,000 Hz range and that the September 15, 2024 audiogram revealed both ears with normal to low normal hearing with the exception of a right 2,000 Hz acoustic notch at the 40 decibel (dB) for a mild level loss. Dr. Israel opined that these patterns were suggestive of a SNHL due at least in part to noise-induced work-related acoustic trauma, noting that the audiometric test results were valid and representative of appellant's hearing sensitivity. He opined that appellant reached MMI on September 16, 2024. Dr. Israel also concurred with Dr. Freifeld's hearing impairment calculations of zero percent binaural hearing impairment and five percent tinnitus impairment. He stated, however, a tinnitus schedule award could not be given as there was no binaural hearing impairment. Dr. Israel recommended authorization for hearing aids with integrated tinnitus masking.

By decision dated November 21, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish that the diagnosed hearing loss was causally related to the accepted employment exposure. It accorded the weight of the medical evidence to Dr. Freifeld, the second opinion physician.

On December 2, 2024 appellant, through counsel, requested reconsideration. Counsel contended that the medical evidence of record was sufficient to establish the claim, as the DMA, Dr. Israel, had opined that appellant sustained employment-related hearing loss.

On December 11, 2024 OWCP requested that Dr. Freifeld provide a supplemental report, as Dr. Israel, the DMA, had opined that appellant's mild hearing loss was due, at least in part, to his accepted employment exposure.

In a January 6, 2025 report, Dr. Freifeld agreed with Dr. Israel, the DMA, that appellant had zero percent hearing impairment and zero percent impairment for tinnitus under OWCP's standard for evaluating hearing loss. He opined that appellant should not have a hearing aid for

tinnitus masking as it would be counterproductive given that his hearing was good. Dr. Freifeld indicated that his opinion in his September 16, 2024 report remained unchanged that the isolated minimal hearing loss seen at 2,000 Hz only was not related to the use of firearms.

On January 31, 2025 OWCP requested that Dr. Israel, the DMA, clarify his opinion in light of Dr. Freifeld's January 6, 2025 supplemental report.

In a February 5, 2025 report, Dr. Israel, the DMA, indicated that he had recommended tinnitus units (often in the form of hearing aids) to distribute tinnitus masking noise due to the severity of his tinnitus and did not recommend hearing aids for amplification. He further opined that the 2,000 Hz acoustic notch might be related to acoustic trauma. Dr. Israel explained that while acoustic trauma notches were typically found at the 3,000-4,000 Hz frequencies, it was not uncommon to also be found at the 6,000 Hz and 2,000 Hz frequencies. He disagreed with Dr. Freifeld that a viral insult to the right ear would cause a uni-frequency acoustic notch result as depicted in the audiogram. Thus, Dr. Israel indicated that his opinion that appellant's hearing loss patterns were suggestive of an SNHL due at least in part to noise-induced employment-related acoustic trauma was unchanged.

On March 28, 2025 OWCP requested that Dr. Freifeld provide a supplemental report based on Dr. Israel's February 5, 2025 report.

In an April 7, 2025 report, Dr. Freifeld indicated that he had no objection with appellant using tinnitus maskers as suggested by Dr. Israel since the tinnitus was bilateral. He also opined that the bilateral tinnitus was "probably" caused by various noises throughout appellant's federal employment. Dr. Freifeld continued to opine that the unilateral 2,000 Hz notch was "probably" not caused by employment-related noise. He explained that the 2,000 Hz frequency notch was usually not caused by acoustic trauma as it was very uncommon to have an isolated 2,000 Hz notch from noise exposure, whether acute or chronic. Dr. Freifeld noted that while certain aircraft noises have been known to cause hearing loss in aircraft mechanics often at the 2,000 Hz frequency, that loss was generally bilateral, not unilateral. Additionally, while appellant had some exposure to aircraft engine noise, it was not known how much exposure he had and whether he used ear protection. Thus, he concluded that the rationale remained that the unilateral 2,000 Hz frequency notch seen was more likely the result of other factors, predominately viral infections, rather than chronic noise exposure, even from aircraft engines, as this type of exposure would affect both ears, not just one.

By decision dated May 28, 2025, OWCP denied modification of its November 21, 2024 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation

³ *Id.*

period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish bilateral tinnitus causally related to the accepted employment exposure.

In his report dated September 16, 2024, Dr. Freifeld reviewed the SOAF, medical records, and available audiograms, and diagnosed right minimal sensorineural hearing loss at 2,000 Hz, left normal hearing, and bilateral subjective tinnitus. He opined that the bilateral tinnitus was reasonably due to noise exposure over his multiple years with various firearms. In follow-up reports dated January 6 and April 7, 2025, Dr. Freifeld indicated that appellant could use tinnitus maskers as the tinnitus was bilateral.

The Board finds that Dr. Freifeld provided examination findings and a well-rationalized opinion based on the medical evidence, including audiograms, regarding the causal relationship of

⁴ *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ See *A.M.*, Docket No. 25-0386 (issued April 18, 2025); *M.T.*, Docket No. 20-1814 (issued June 24, 2022); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

⁹ *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

appellant's diagnosed tinnitus condition. Accordingly, the Board finds that Dr. Freifeld's second opinion represents the weight of the medical evidence for the acceptance of bilateral tinnitus.¹⁰

As the medical evidence of record is sufficient to establish causal relationship between appellant's bilateral tinnitus and the accepted employment exposure, the Board finds that appellant has met his burden of proof in this regard. The case shall, therefore, be remanded for payment of related medical expenses and any attendant disability.

The Board further finds, however, that the case is not in posture for decision with regard to whether appellant has established hearing loss as causally related to his accepted employment injury.

In an April 7, 2025 report, Dr. Freifeld opined that the unilateral 2,000 Hz notch was "probably" not caused by employment-related noise. He explained that the 2,000 Hz frequency notch was usually not caused by acoustic trauma as it was very uncommon to have an isolated 2,000 Hz notch from noise exposure, whether acute or chronic. Dr. Freifeld noted that while certain aircraft noises have been known to cause hearing loss in aircraft mechanics often at the 2,000 Hz frequency, that loss was generally bilateral, not unilateral. Additionally, he noted that while appellant had some exposure to aircraft engine noise, it was not known how much exposure he had and whether appellant used ear protection. Thus, Dr. Freifeld concluded that the rationale remained that the unilateral 2,000 Hz frequency notch seen was more likely the result of other factors, predominately viral infections, rather than chronic noise exposure, even from aircraft engines, as this type of exposure would affect both ears, not just one. The Board has held, however, that it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.¹¹

When OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues.¹² Therefore, the case shall be remanded for OWCP to further develop the medical evidence with regard to whether appellant's work-related noise exposure caused or aggravated his claimed hearing loss.

On remand OWCP shall refer appellant, along with the case record, an updated SOAF, and a series of questions to a new physician in the appropriate field of medicine for a rationalized opinion on whether appellant's hearing loss was causally related to the accepted employment injury. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

¹⁰ See *V.A.*, Docket No. 25-0403 (issued May 6, 2025); *C.M.*, Docket No. 24-0893 (issued November 15, 2024).

¹¹ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹² See *Ayanle A. Hashi*, 56 ECAB 234 (2004); *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where OWCP referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish bilateral tinnitus causally related to the accepted employment exposure. The Board further finds, however, that the case is not in posture for decision with regard to whether appellant has established hearing loss as causally related to his accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the November 21, 2024 and May 28, 2025 decisions of the Office of Workers' Compensation Programs are reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 27, 2025
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