

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

T.T., Appellant)
and) Docket No. 25-0523
DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS AND BORDER PROTECTION,)
San Diego, CA, Employer)
Issued: June 24, 2025

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 May 2, 2025 appellant filed a timely appeal from an April 10, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0523.

On October 8, 2024 appellant, then a 54-year-old border patrol agent, 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 emergency vehicle horns and sirens, vehicle engines and exhaust systems, helicopter rotors, and firearms. He did not stop work.

In support of his claim, appellant submitted audiograms dated October 31, 2001 and September 2, 2024.

On December 5, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a series of questions, for a second opinion examination with Dr. Jennifer MacEwan, a Board-certified otolaryngologist, 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 November 22, 2024 SOAF provided to Dr. MacEwan indicated that OWCP had not yet accepted any medical condition as work related.

In a January 24, 2025 report, Dr. MacEwan noted her review of the SOAF, performed an audiological evaluation, and completed OWCP's evaluation questionnaire. She reviewed an audiogram performed that day, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 10, 15, 10, and 25 decibels (dBs) in the left ear, respectively, and 15, 20, 25, and 35 dBs in the right ear, respectively. Dr. MacEwan diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. She opined that the bilateral sensorineural hearing loss was due to occupational noise exposure. Dr. MacEwan 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*)¹ 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, with no additional impairment for tinnitus. She recommended a trial of hearing aids.

By decision dated April 10, 2025, OWCP accepted that appellant was in the performance of duty, that the identified employment factors occurred as alleged, and that a medical condition had been diagnosed. However, it denied the claim, finding that the medical evidence was insufficient to establish a medical condition causally related to the accepted work event(s) because "the second opinion examiner determined you hearing loss impairment is zero percent."

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

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.² 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.³ 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.⁴

OWCP denied appellant's occupational disease claim as he had not established a ratable hearing loss for schedule award purposes. It did not explain its findings with regard to whether the medical evidence of record was sufficient to establish causal relationship.

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 appropriate subject of the decision, *i.e.*, whether he had met his burden of proof to establish binaural hearing loss with tinnitus causally related to factors of his federal

¹ A.M.A., *Guides* (6th ed. 2009).

² 5 U.S.C. § 8124(a).

³ 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

