

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

R.R., Appellant)	
)	
and)	Docket No. 25-0535
)	Issued: June 23, 2025
DEPARTMENT OF AGRICULTURE,)	
FOOD SAFETY AND INSPECTION SERVICE,)	
San Antonio, TX, Employer)	
)	

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 8, 2025 appellant filed a timely appeal from an April 3, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 3, 2025 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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 additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury while in the performance of duty on September 10, 2024, as alleged.

FACTUAL HISTORY

On January 29, 2025 appellant, then a 38-year-old consumer safety inspector, filed a traumatic injury claim (Form CA-1) alleging that on September 10, 2024 he sustained hearing loss due to noise exposure while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty.

In a January 31, 2025 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence. By separate development letter of the same date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of the employees' statements and factual and medical evidence related to appellant's employment-related noise exposure. OWCP afforded the employing establishment 30 days to submit the requested evidence. No additional evidence was received.

In a follow-up letter dated March 11, 2025, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish his claim. It noted that he had 60 days from the January 31, 2025 letter to submit the necessary evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In support of his claim, appellant submitted a March 6, 2025 audiogram from D'Anne Wengenroth, a hearing instrument specialist.

By decision dated April 3, 2025, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the alleged exposure to noise occurred on September 10, 2024, as alleged. Thus, it concluded that the requirements to establish an injury, as defined by FECA, had not been met.

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 timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

³ *Id.*

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁷

To establish that, an injury occurred as alleged, the injury does not have to be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁸ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ An employee's statements alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury while in the performance of duty on September 10, 2024, as alleged.

Appellant has not provided sufficient detail to establish that he experienced employment-related noise exposure on September 10, 2024, as alleged.¹¹ On his Form CA-1 appellant generally stated that exposure caused a decline in his hearing. With regard to the present traumatic injury

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Caralone*, 41 ECAB 354 (1989).

⁸ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁹ *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹⁰ *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *P.J.*, Docket No. 15-1816 (issued December 23, 2015).

claim, he failed to describe, with dates, a specific work-related noise exposure to which he is attributing his hearing loss.¹²

OWCP in its January 31 and March 11, 2025 development letters, advised appellant of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. Appellant neither responded to the questionnaire, nor provided sufficient evidence in support of his claim. As such, the record does not contain an explanation as to the type of noise, decibel level, or hours of exposure, nor does it contain a description of his employment duties on specific dates or how his federal employment exposed him to additional factors of hazardous noise. The only explanation provided pertaining to appellant's work-related noise exposure was the generalized and vague statement noted in his Form CA-1. By failing to describe the work-related noise exposure and circumstances surrounding the alleged injury, he has not met his burden of proof to establish a traumatic injury in the performance of duty on September 10, 2024, as alleged.¹³

The Board, therefore, finds that appellant has failed to meet his burden of proof.¹⁴ Consequently, it is unnecessary to address the medical evidence of record.¹⁵

Appellant may submit new evidence or argument, together with a written request for reconsideration to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury while in the performance of duty on September 10, 2024, as alleged.

¹² *M.L.*, Docket No. 14-1208 (issued September 29, 2014).

¹³ *P.T.*, Docket No. 14-0598 (issued August 5, 2014).

¹⁴ *T.B.*, Docket No. 18-1214 (issued January 29, 2019).

¹⁵ See *S.R.*, Docket No. 25-0117 (issued February 3, 2025); *M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 23, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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