

¹ The Board notes that following the February 5, 2025 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* 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.*

including mowing noise and industrial shop noise. OWCP assigned File No. xxxxxx359.² By decision dated January 9, 2014, it accepted the claim for left ear noise-induced hearing loss.

By decision dated September 12, 2014, OWCP granted appellant an additional 21 percent left ear hearing loss, in OWCP File No. xxxxxx359, resulting in a total schedule award of 66 percent left ear hearing loss. It also found zero percent hearing loss in the right ear.

In a letter dated February 20, 2024, appellant requested an additional schedule award, noting he sustained left ear and right ear hearing loss due to his accepted employment injuries.

On February 20, 2024, appellant filed a claim for compensation (Form CA-7) for an additional schedule award. In support of his request, he submitted a reference audiogram dated July 16, 2007 and audiogram dated February 15, 2024 from the employing establishment's hearing conservation program.³

In a letter dated March 27, 2024, OWCP informed appellant that his current medical documents would be forwarded to the district medical adviser for a permanent impairment rating.

On May 29, 2024, OWCP prepared a statement of accepted facts (SOAF) and the medical record for referral to an OWCP district medical adviser (DMA) for a permanent impairment rating.

On June 25, 2024, OWCP informed appellant that his claim would be referred to a second opinion physician, following which the case would be forwarded to the DMA for review of the permanent impairment rating.

On July 23, 2024, Dr. Jeffry M. Israel, a Board-certified otolaryngologist serving as a DMA, advised that he was unable to currently evaluate appellant's claim. He noted that he could not locate the February 24, 2024 report from an unknown physician referenced in OWCP's referral memorandum. Dr. Israel also related that he would need appellant's current audiogram and a second opinion physician's report for review.

OWCP subsequently received additional audiograms from the employing establishment's hearing conservation program.

By decision dated February 5, 2025, OWCP denied appellant's claim for an additional schedule award finding the evidence did not support a materially worsening or additional impairment.

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

On May 29, 2024, OWCP referred a SOAF and medical evidence to an OWCP district medical adviser (DMA) for a permanent impairment rating. It sent a letter dated June 25, 2024, informing appellant that his case would be referred for a second opinion evaluation. On July 23,

² OWCP File No. xxxxxx359 and File No. xxxxxx837 have been administratively combined by OWCP, with File No. xxxxxx359 serving as the master file.

³ Appellant retired from the employing establishment, effective February 28, 2024.

2024, Dr. Israel, a DMA, advised that he was unable to provide a report because he could not locate the February 24, 2024 report referenced in the referral memorandum. He also requested OWCP provide a second opinion physician's examination report and current audiogram for review. OWCP, however, did not refer appellant for a second opinion evaluation.

The Board, therefore, finds that OWCP failed to properly develop appellant's claim for an additional schedule award. OWCP's procedures provide that all claims for an additional schedule award should be referred for a second opinion medical evaluation. Once findings are reconciled with any medical evidence submitted by the claimant, the impairment evaluation carrying the weight of the medical evidence should be routed to the DMA for review.⁴ While OWCP informed appellant that his claim would be referred for a second opinion evaluation, no such referral was made.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.⁵ Once it undertakes development of the record, OWCP must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.⁶

The case must, therefore, be remanded for further development of the medical evidence. On remand, OWCP shall refer appellant, along with an updated SOAF, the medical record, and a series of questions to a specialty in the appropriate field of medicine to obtain an audiogram and provide a second opinion impairment rating with regard to appellant's hearing loss. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.9d (February 2022).

⁵ See *L.L.*, Docket No. 21-0625 (issued January 17, 2023); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018).

⁶ *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

IT IS HEREBY ORDERED THAT the February 5, 2025 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: March 11, 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