

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

A.C., Appellant)
and) Docket No. 25-0783
DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS AND BORDER PROTECTION,)
Homestead, FL, Employer)
Issued: September 15, 2025

Appearances:

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

Case Submitted on the Record

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 2025 appellant, through counsel, filed a timely appeal from April 1 and August 18, 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 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 causally related to the accepted employment exposure.

FACTUAL HISTORY

On January 22, 2025 appellant, then a 46-year-old customs and border protection interdiction agent, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss and tinnitus causally related to factors of his federal employment. He noted that he first became aware of his conditions and realized their relationship to his federal employment on March 1, 2015. Appellant retired in March 2022.

In a development letter dated January 28, 2025, 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 his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations, including information about his noise exposure and the type of ear protection provided. OWCP requested that the employing establishment respond within 30 days.

In a response dated January 29, 2025, an employing establishment supervisor stated that he did not have all the requested information regarding locations of exposure or sources of exposure because he only supervised appellant for a brief period of time.

In a February 16, 2025 statement, appellant described his work history and noise exposure. He related that he amassed over 4,000 flight hours as part of the aircrew. Appellant explained that he was exposed to propeller and rotor noise in flight and on the ground. He also noted noise exposure from training at the firearms range, noting that he did use earplugs.

On February 20, 2025 OWCP referred appellant, together with the case record and a statement of accepted facts (SOAF) to Dr. Stephen Yavelow, a Board-certified otolaryngologist, for a second opinion evaluation. Dr. Yavelow was asked to address whether appellant had sensorineural hearing loss in excess of what would be normally predicted on the basis of presbycusis, and whether appellant's workplace exposure was sufficient as to intensity and duration to have caused hearing loss. Regarding tinnitus, Dr. Yavelow was also asked to address whether appellant had a tinnitus condition and if so, whether his tinnitus was in part due to noise exposure encountered in appellant's federal employment.

In a report dated March 11, 2025, Dr. Yavelow noted his review of the SOAF, and the results of appellant's audiological evaluation conducted that day. He noted that no audiometric data from the beginning of appellant's accepted noise exposure was available for his review, but that the present audiometric findings showed that appellant's hearing is normal and that appellant also was exposed to noise from motorcycles and lawn equipment. In response to the question of whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question, Dr. Yavelow replied that the question was not applicable. He further noted that appellant's canals and drums, drum motility, and basic fork tests were normal and that there

was no indication of an underlying medical condition such as an acoustic neuroma or Meniere's disease. Dr. Yavelow diagnosed tinnitus and "normal hearing" and indicated that the tinnitus was at least in part due to prolonged exposure to excessive noise from aircraft. He recommended "use of white noise protection tinnitus masking as needed." In accompanying audiometric test results, Dr. Yavelow noted his review of an audiogram performed that day which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz), losses of 15, 10, 10, and 5 decibels (dBs) in the right ear, respectively, and 15, 10, 10 and 10 dBs in the left ear, respectively.

By decision dated April 1, 2025, OWCP denied appellant's claim. It found that the evidence of record was sufficient to establish the alleged employment exposure, but insufficient to establish a diagnosed medical condition in connection with the accepted employment exposure. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 1, 2025 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was later converted to a request for review of the written record.

By decision dated August 18, 2025, OWCP's hearing representative affirmed the April 1, 2025 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 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

³ *Id.*

⁴ *B.W.*, Docket No. 25-0585 (issued August 27, 2025); *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 *B.W.*, *id.*; *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. Elyett*, 41 ECAB 992 (1990).

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.

OWCP referred appellant to Dr. Yavelow for a second opinion evaluation to address whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the hearing loss in question and whether appellant had a tinnitus condition in part due to noise exposure encountered in his federal employment.

In his report dated March 11, 2025, Dr. Yavelow reviewed the SOAF, medical records, and audiogram performed that day, and diagnosed normal hearing loss and bilateral tinnitus. He attributed appellant's bilateral tinnitus to appellant's prolonged exposure to excessive aircraft noise in the course of his federal employment.

The Board finds that Dr. Yavelow provided examination findings and an opinion based on the medical evidence, including an audiogram regarding causal relationship of appellant's diagnosed tinnitus condition. Accordingly, the Board finds that Dr. Yavelow'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 causally related to his accepted employment exposure.

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

⁸ *B.W.*, *supra* note 4; *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 *B.W.*, *id.*; *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).

¹⁰ See *B.W.*, *id.*

In a report dated March 11, 2025, Dr. Yavelow noted his review of the SOAF, and the results of appellant's audiological evaluation conducted that day. He noted that no audiometric data from the beginning of appellant's accepted noise exposure was available for his review, but that the present audiometric findings showed that appellant's hearing is normal and that appellant also was exposed to noise from motorcycles and lawn equipment. In response to the question of whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question, Dr. Yavelow replied that the question was not applicable. He further noted that appellant's canals and drums, drum motility, and basic fork tests were normal and that there was no indication of an underlying medical condition such as an acoustic neuroma or Meniere's disease. Dr. Yavelow diagnosed tinnitus and "normal hearing." However, in accompanying audiometric test results, he noted his review of an audiogram performed that day which demonstrated at 500, 1,000, 2,000, and 3,000 Hz, losses of 15, 10, 10, and 5 dBs in the right ear, respectively, and 15, 10, 10 and 10 dBs in the left ear, respectively. Therefore Dr. Yavelow's opinion is unclear as to whether appellant has hearing loss causally related to the accepted employment exposure.

The Board notes that 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.¹¹ As OWCP undertook development of the evidence, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹²

On remand, OWCP shall obtain a supplemental opinion from Dr. Yavelow which explains, with rationale, whether the hearing loss shown in the audiometric testing was causally related to the accepted employment exposure. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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 that the case is not in posture for decision as to whether appellant has hearing loss causally related to the accepted employment exposure.

¹¹ *T.R.*, Docket No. 17-1961 (issued December 20, 2018); *William J. Cantrell*, 34 ECAB 1223 (1983).

¹² *Id.*; *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 1 and August 18, 2025 are reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 15, 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