

<sup>2</sup> The Board notes that, following the July 28, 2025 decision, OWCP received additional evidence. 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.*

## **ISSUES**

The issues are: (1) whether appellant has met his burden of proof to establish hearing loss in the performance of duty, as alleged; and (2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On March 25, 2025 appellant, then a 60-year-old Customs and Border Protection officer, filed an occupational disease claim (Form CA-2) alleging that he developed gradual/progressive binaural hearing loss due to noise exposure, which included working near planes, ships, trains, vehicles, 18-wheeler trucks and training with firearms for 19 years. He noted that he first became aware of the condition and realized its relationship to his federal employment on February 23, 2022. Appellant did not stop work.

OWCP received a copy of appellant's position description and medical records from the employing establishment's health unit. A copy of a February 23, 2022 audiogram was also provided, along with a February 23, 2022 audiogram history/report, which noted appellant's employment exposure to intermittent noise from 18-wheeler trucks and vehicles 5 days a week, and quarterly exposure to 2 hours of impulse noise each day from rifles, pistols, shotguns, with hearing protection. The report also noted that appellant's current non-occupational noise exposure included 2 hours of rifle and pistol shooting every three months.

In a development letter dated April 2, 2025, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for completion. OWCP afforded appellant 60 days to respond.

In a separate development letter, also dated April 2, 2025, OWCP requested that the employing establishment provide information regarding appellant's claimed noise exposure, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded the employing establishment 30 days to respond.

OWCP subsequently received a copy of appellant's September 20, 2022 Privacy Act request for his employing establishment medical records. In an October 5, 2022 response, the employing establishment indicated that, after a thorough search, they were unable to locate a medical folder for appellant. It directed appellant to contact other record repositories to obtain the OWCP requested records. Text messages dated October 24 through October 30, 2024 indicated that appellant had again requested his medical records, but that his medical records could not be located. In a November 21, 2024 email, S.P., a Human Resources Assistant, informed appellant that the records management team in Indianapolis was also unable to locate his medical records. However, S.P. advised appellant that, to access records conducted under the employing establishment's medical surveillance program, he could contact additional medical record management sites. It again directed appellant to contact other record repositories to obtain the OWCP requested records. A duplicate copy of appellant's February 23, 2022 audiogram and audiogram history/report, were also submitted.

By decision dated July 2, 2025, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish the implicated employment factors. It noted that he had not provided sufficient details regarding the cause of his claimed hearing loss.

On July 17, 2025 appellant requested reconsideration. No additional evidence was received.

By decision dated July 28, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT – ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact 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 period of FECA, 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 employment injury.<sup>4</sup> 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.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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.<sup>6</sup>

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he believes caused or adversely affected a condition for which compensation is claimed.<sup>7</sup>

### **ANALYSIS -- ISSUE 1**

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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *B.E.*, Docket No. 26-0221 (issued May 29, 2026); *D.J.*, Docket No. 19-1387 (issued December 20, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.* See also *L.D.*, Docket No. 22-0214 (issued September 21, 2022); *P.A.*, Docket No. 18-0559 (issued January 29, 2020).

<sup>6</sup> *D.J.*, Docket No. 26-0267 (issued May 15, 2026); *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>7</sup> *T.W.*, Docket No. 20-0767 (issued January 13, 2021); *L.D.*, Docket No. 19-1301 (issued January 29, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

The record reflects that appellant attempted to obtain employing establishment records to document his hazardous noise exposure, as well as his hearing loss. The employing establishment's records management team was unable to obtain a copy of appellant's medical folder. It asserted that it did not have access to appellant's records and merely directed appellant to contact other record repositories to obtain the OWCP requested records.

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>8</sup> OWCP has an obligation to see that justice is done.<sup>9</sup>

As OWCP did not fulfill its obligation to obtain the relevant hearing conservation records, the Board finds that further development is required. On remand OWCP shall request that the employing establishment obtain all of appellant's relevant records, including those pertaining to the employing establishment's hearing conservation program. It shall request that the employing establishment provide information regarding hearing conservation program, including the specific dates, periods, and locations during which appellant may have been exposed to loud noise, and whether hearing protection was used.<sup>10</sup> Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.<sup>11</sup>

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<sup>8</sup> *J.R.*, Docket No. 24-0161 (issued May 28, 2026); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978).

<sup>9</sup> *J.V.*, Docket No. 26-0092 (issued May 11, 2026); *see A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>10</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4(b) (November 2013).

<sup>11</sup> In light of the Board's disposition in Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2025 merit decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The July 28, 2025 nonmerit decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 15, 2026  
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