United States Department of Labor
Employees' Compensation Appeals Board

W.S., Appellant	)	
and	)	**Docket No. 26-0376**
	)	**Issued: October 26, 2026**
DEPARTMENT OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION, Norton, VA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On March 13, 2026 appellant filed a timely appeal from a March 2, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an increase in hearing loss for the period June 4, 2015 through January 29, 2016 in the performance of duty, as alleged.

FACTUAL HISTORY

This case has previously been before the Board.[2] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On November 10, 2022 appellant, then a 70-year-old mine safety and health inspector, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss as a result of factors of his federal employment including exposure to loud noises from mining equipment. He noted that he first became aware of his hearing loss on January 9, 2009 and realized its relationship to his federal employment on January 30, 2015.[3]

In an undated statement, appellant explained that he worked as a laborer from January 17, 1975 through April 2000, and thereafter worked for the employing establishment. From April 2000 through December 2004, he was employed as a coal mine inspector; from December 2004 through December 2007 as a field office supervisor; from January 2008 through January 2009 as a staff assistant; from January 2009 through January 2010 as a ventilation supervisor; from January 2010 through June 2011 as a field office supervisor; and as an assistant district manager from June 2011 through his retirement on January 29, 2016. Appellant alleged that he was exposed to loud noises from mining equipment while performing inspections for six hours per day on average.[4]

On September 7, 2023, OWCP requested that the employing establishment provide clarification regarding appellant's exposure to hazardous noise from June 4, 2015 through January 29, 2016.

In a September 12, 2023 response, the employing establishment indicated that appellant had no noise exposure for the period June 4, 2015 through January 29, 2016.

[2] Docket No. 24-0082 (issued April 8, 2024).

[3] Appellant has a prior occupational disease claim (Form CA-2) under OWCP File No. xxxxxx385, which on July 13, 2015 OWCP accepted for binaural hearing loss. By decision dated August 25, 2015, OWCP issued a schedule award for 25 percent binaural hearing loss under that file. OWCP has administratively combined OWCP File Nos. xxxxxx538 and xxxxxx385, with the latter serving as the master file.

[4] In a development letter dated November 22, 2022, OWCP requested that appellant clarify whether he was claiming an increase in hearing loss from June 4, 2015 through January 29, 2016 due to exposure at work, or whether he intended to claim an additional schedule award under OWCP File No. xxxxxx385. On November 27, 2022 appellant clarified that he intended his claim under OWCP File No. xxxxxx538 to be for additional hearing loss due to exposure at work from June 4, 2015 through January 29, 2016.

By decision dated October 13, 2023, OWCP denied appellant's claim, finding that he had not established that his current hearing loss arose during the course of employment and within the scope of compensable work factors, as defined by FECA.

Appellant appealed to the Board. By decision dated April 8, 2024,[5] the Board set aside OWCP's October 13, 2023 decision and remanded the case to OWCP to obtain all relevant information from the employing establishment necessary to determine whether appellant sustained an increase in hearing loss for the period June 4, 2015. After this and other such development as deemed necessary, OWCP was to issue a *de novo* decision.

In a June 12, 2024 development letter to the employing establishment, OWCP related the history of the present claim and requested that the employing establishment submit a statement supporting its position. OWCP afforded the employing establishment 30 days to submit the requested information.

In a July 9, 2024 response, the employing establishment indicated it did not have access to systems containing appellant's records for the dates requested. It further indicated that all the knowledgeable supervisors had since retired. Attempts were being made to gain access to the appropriate systems.

In a February 28, 2025 development letter, OWCP requested that appellant provide information regarding whether he was required to perform field visits from June 4, 2015 through January 29, 2016 and, if so, to provide information regarding the frequency of such visits and the nature of any resultant noise exposure. It afforded him 30 days to provide the requested information.

In an undated response, received on March 4, 2026, appellant explained that he was required to perform field visits from June 4, 2015 through January 29, 2016. He advised that he was an assistant district manager at District 6 during that period and that assistant district managers were required to conduct a supervisory activity review on each supervisor under their supervision once every six months. They were also required to investigate issues concerning high-profile complicated mines that were having issues with their plans and that had sustained accidents. Appellant related that he had four supervisors under his guidance during that period and that each supervisory activity review that he conducted lasted two days, for a total of eight days given that he had to conduct supervisory activity reviews for these four individuals. He noted that situational visits for plan issues and accidents were completed as needed and that he conducted at least eight additional mine visits for this reason from June 4, 2015 through January 29, 2016. Appellant related that each mine visit took at least eight hours per day, six hours of which were spent underground. He indicated that, during those visits from June 4, 2015 through January 29, 2016, he was exposed to the constant roar and clanging of the wheels of mantrap equipment which moved along a steel trackway for one to five miles. Appellant noted that the mantrap equipment trackway was beside a conveyor belt that transported coal from the face area and that the conveyor belt constantly made a loud clanging sound. He also described exposure to loud noise from coal being dumped into shuttle cars, the clanging of a metal conveyor chain against a belt feeder, and coal and rocks going through a crusher machine. Appellant advised that he also was exposed to the

[5] *Supra* note 2.

noise of coal being cut down by a machine with an eleven-foot head, the loading of the cut coal into a gathering pan, and the machines which drilled five-foot holes into the coal. He indicated that earplugs provided by the employing establishment were worn when moving from portal to portal.

In a July 17, 2025 development letter, OWCP requested that the employing establishment obtain appellant's daily timesheets for the period June 4, 2015 through January 29, 2016.[6]

In an August 15, 2025 response, the employing establishment, reported that there was no record for appellant of on-site mine hours for the period June 4, 2015 through January 29, 2016. It noted that appellant became an assistant district manager on or about 2011 and stated that "any potentially excessive noise exposure in accordance with the responsibilities of an assistant district manager would have been very minimal as the average mine visits for this position were approximately once a month."

By *de novo* decision dated March 2, 2026, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish an increase in hearing loss for the period June 4, 2015 through January 29, 2016 in the performance of duty, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA[7] 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 filed with the applicable time limitation, 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.[8] These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[9]

The phrase "sustained while in the performance of duty" has been interpreted by the Board to be the equivalent of the commonly found prerequisite in workers' compensation law of "arising out of and in the course of employment."[10] To arise in the course of employment, in general, an injury must occur: (1) at a time when the employee may reasonably be stated to be engaged in the master's business; (2) at a place when he or she may reasonably be expected to be in connection with his or her employment; and (3) while he or she was reasonably fulfilling the duties of his or

[6] OWCP had sent the employing establishment a similar letter on February 4, 2025, but no response was received.

[7] *Id*.

[8] *S.P.*, Docket No. 26-0378 (issued June 22, 2026); *E.S.*, Docket No. 18-1580 (issued January 23, 2020); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *C.S.,* Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

[9] *J.C.*, Docket No. 26-0179 (issued March 25, 2026); *S.P.,* 59 ECAB 184 (2007); *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[10] *J.R.,* Docket No. 24-0161 (issued May 28, 2026); *C.L.*, Docket No. 19-1985 (issued May 12, 2020); *S.F.*, Docket No. 09-2172 (issued August 23, 2010); *Valerie C. Boward*, 50 ECAB 126 (1998).

her employment or engaged in doing something incidental thereto.[11] In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances presented, causal relationship exists between the employment itself, or the conditions under which it is required to be performed, and the resultant injury.[12]

The Board has previously held that where exposure to noise at work causes an adverse effect on an employee's hearing, every such exposure constitutes a new injury.[13] If an employee continues to be exposed to noise at work subsequent to the filing of a hearing loss claim and he believes the additional exposure has caused an increase in his loss of hearing, he must file another claim for the additional injury in order to secure benefits for the increased loss.[14]

ANALYSIS

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

By decision dated April 8, 2024,[15] the Board set aside OWCP's October 13, 2023 decision and remanded the case for OWCP to obtain all relevant information from the employing establishment necessary to determine whether appellant sustained an increase in hearing loss for the period June 4, 2015, followed by a *de novo* decision.

In a June 12, 2024 development letter, OWCP requested additional information from the employing establishment regarding appellant's claim. It afforded the employing establishment 30 days to respond. In a July 9, 2024 response, the employing establishment indicated it did not have access to systems containing appellant's records for the dates requested, and that all of the knowledgeable supervisors had since retired. It further indicated, however, that attempts were being made to gain access to the appropriate systems.

In a July 17, 2025 development letter, OWCP requested that the employing establishment obtain appellant's daily timesheets for the period June 4, 2015 through January 29, 2016.[16] In an August 15, 2025 response, the employing establishment reiterated that there was no record for appellant of on-site mine hours for the period June 4, 2015 through January 29, 2016. It explained that appellant became an assistant district manager on or about 2011 and stated that "any potentially excessive noise exposure in accordance with the responsibilities of an assistant district manager would have been very minimal as the average mine visits for this position were approximately once a month." However, while the employing establishment acknowledged that

[11] *C.D.,* Docket No. 26-0023 (issued January 29, 2026); *S.V.*, Docket No. 18-1299 (issued November 5, 2019); *Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006); *Mary Keszler*, 38 ECAB 735, 739 (1987).

[12] *P.C.,* Docket No. 26-0183 (issued May 13, 2026); *J.N.*, Docket No. 19-0045 (issued June 3, 2019); *M.W.*, Docket No. 15-0474 (issued September 20, 2016); *Mark Love*, 52 ECAB 490 (2001).

[13] *B.W.,* Docket No. 11-0230 (issued August 16, 2011); *Henry Ross, Jr.*, 39 ECAB 373, n.13 (1988).

[14] *See Charles E. Moore*, 35 ECAB 876 (1984).

[15] *Supra* note 2.

[16] OWCP had sent the employing establishment a similar letter on February 4, 2025, but no response was received.

appellant had some minimal exposure, it did not sufficiently describe the frequency and duration of that exposure. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.[17] It 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.[18]

The case shall, therefore, be remanded for OWCP to obtain a sufficient response from the employing establishment regarding appellant's claim for increased hearing loss. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 2, 2026 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.

Issued: October 26, 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

[17] *J.V.,* Docket No. 26-0092 (issued May 11, 2026); *R.D.,* Docket No. 21-0050 (issued February 25, 2022); *L.G.*, Docket No. 21-0690 (issued December 6, 2021).

[18] *See L.G., id*.; *K.W.,* Docket No 15-1535 (issued September 23, 2016).