United States Department of Labor
Employees' Compensation Appeals Board

M.B., Appellant	)	
and	)	**Docket No. 26-0554**
	)	**Issued: September 11, 2026**
DEPARTMENT OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, El Paso, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 1, 2026 appellant filed a timely appeal from a May 21, 2026 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 26-0554.[1]

On January 30, 2025 appellant, then a 63-year-old retired criminal investigator, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss, tinnitus, migraine headaches, and neurological issues due to factors of his federal employment, including his work as a firearms instructor from 1991 to 2003, and a criminal investigator from 2003 to 2016. He noted that he first became aware of his claimed conditions on August 1, 1991, and realized their relation to his federal employment on August 1, 2003. Appellant advised that he retired from the employing establishment, effective June 30, 2026. On the reverse side of the

[1] Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Appellant asserted that oral argument should be granted to allow him the opportunity to argue that OWCP did not properly develop his claim prior to denying it as untimely filed. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because this matter requires an evaluation of the evidence of record. As such, the arguments on appeal can be adequately addressed in a decision based on a review of the case record. Oral argument in this appeal would not serve a useful purpose. Therefore, the oral argument request is denied, and this order is based on the case record as submitted to the Board.

claim form, F.B., appellant's supervisor, indicated that appellant reported his claimed injury to him on March 4, 1992.

In an accompanying statement, appellant noted that after he started working for the employing establishment as a border patrol agent on September 21, 1987, he was exposed to hazardous noise from pistols, rifles, shotguns, and distraction devices. He submitted certificates for training courses, and an earnings and leave statement.

In development letters dated February 14, 2025, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided questionnaires for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter dated February 14, 2025, it requested that the employing establishment provide information regarding appellant's claim, including comments from a knowledgeable supervisor regarding the accuracy of his allegations. OWCP requested that the employing establishment answer several questions regarding appellant's exposure to workplace noise and to submit any reports of medical examinations pertaining to hearing problems. It afforded the employing establishment 30 days to respond.

In a February 18, 2025 statement, appellant provided further details of his exposure to hazardous noise in the workplace and discussed his history of audiometric testing. He submitted additional evidence, including reports of medical examinations and audiometric testing from 1992 and 2025, and additional certificates for training courses.

In a February 18, 2025 letter, the employing establishment challenged appellant's claim, asserting that it was untimely filed. OWCP also received a February 21, 2025 statement wherein F.B. responded to the February 14, 2025 development letter. On February 28, 2025 it received appellant's responses to the questionnaires provided in conjunction with the February 14, 2025 development letters. OWCP subsequently received additional reports of medical examinations and audiometric testing from 1998 and 2000.

By decision dated April 2, 2025, OWCP denied appellant's occupational disease claim, finding that it was untimely filed. On April 9, 2025 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. He submitted a report of audiometric testing from 2005. Following a preliminary review, by decision dated August 13, 2025, OWCP's hearing representative set aside the April 2, 2025 decision and remanded the case to OWCP to further develop the evidence of record, to be followed by a *de novo* decision regarding appellant's occupational disease claim.

In an August 28, 2025 development letter, OWCP advised the employing establishment that the response of F.B. did not fully address the questions posed in the prior development letter. It requested that the employing establishment confirm whether it performed audiograms on appellant, and if so, provide copies of all audiograms conducted; provide copies of any medical examinations related to hearing or ear issues; identify and provide details for each job site where he might have been exposed to hazardous noise levels; provide a complete copy of his employment record; and provide any documentation supporting that he reported his claimed conditions to a supervisor on March 4, 1992. OWCP afforded the employing establishment 30 days to respond.

In a separate August 28, 2025 development letter, OWCP requested that appellant answer additional questions regarding any previously filed hearing loss claims, and any medical documentation or correspondence documenting hearing loss around June 30, 2016. It afforded him 30 days to respond. On September 16, 2025 OWCP received appellant's response to the August 28, 2025 letter. Appellant submitted medical evidence from 2025, and personnel records from 1987 through 2016. On February 23, 2026 OWCP received an additional statement from appellant.

In a March 17, 2026 follow-up development letter, OWCP requested that the employing establishment provide the information/documentation that it had previously requested in its August 28, 2025 development letter. It requested that the employing establishment respond by March 22, 2026.

On May 16, 2026 OWCP received a statement of the same date from appellant.

On May 21, 2026 OWCP received a statement of the same date wherein the employing establishment addressed the request for additional information delineated in OWCP's March 17, 2026 development letter. By decision dated May 21, 2026, it denied appellant's occupational disease claim, finding that it was untimely filed. OWCP did not address the May 21, 2026 statement of the employing establishment.

In the case of *William A. Couch*,[2] the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.[3] As the Board's decisions are final as to the subject matter appealed,[4] it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.[5]

In the present case, OWCP did not review the May 21, 2026 statement of the employing establishment.[6] The Board, therefore, must set aside the May 21, 2026 decision of OWCP and remand the case so that OWCP may fully consider and address the evidence that was properly submitted prior to the issuance of this decision. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

[2] 41 ECAB 548, 553 (1990); *see also Order Remanding Case, S.N.,* Docket No. 26-0302 (issued June 11, 2026); *Order Remanding Case*, *J.R.*, Docket No. 21-1421 (issued April 20, 2022).

[3] *Id*.

[4] 20 C.F.R. § 501.6(d).

[5] *W.S.,* Docket No. 26-0313 (issued June 15, 2026); *T.B.,* Docket No. 19-1841 (issued July 7, 2020); *E.P.,* Docket No. 14-0278 (issued February 26, 2014). *See also William A. Couch*, *supra* note 2.

[6] OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (version 1.2 issued May 4, 2026).

IT IS HEREBY ORDERED THAT the May 21, 2026 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: September 11, 2026
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