

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

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P.N., Appellant )

and )

**DEPARTMENT OF HOMELAND SECURITY,** )  
**U.S. IMMIGRATION AND CUSTOMS** )  
**ENFORCEMENT, ENFORCEMENT AND** )  
**REMOVAL OPERATIONS, Los Angeles, CA,** )  
**Employer** )

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**Docket No. 24-0918**  
**Issued: October 28, 2024**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On September 13, 2024 appellant filed a timely appeal from an August 26, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish a medical diagnosis in connection with the accepted factors of his federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On June 20, 2024 appellant, then a 49-year-old general inspection, investigation, and compliance officer, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss due to factors of his federal employment, including loud noise exposure from gunfire at quarterly firearms range qualifications. He noted that he underwent his first hearing test on November 28, 2016, at which time he first became aware of his condition and realized its relationship to his federal employment on that date. Appellant did not stop work.

In support of his claim, appellant provided audiograms dated November 28, 2016 and June 18, 2024.

In a development letter dated June 26, 2024, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities and noise exposure. It afforded appellant 60 days to submit the necessary evidence, and afforded the employing establishment 30 days.

Appellant responded to OWCP's development questionnaire on June 26, 2024. He related that commencing in 2006 he worked as a federal agent and that he was required to meet quarterly qualifications with his handgun and long gun, during which he was exposed to extremely loud noise. Appellant asserted that he wore the required eye and ear protection during these qualifications. He reiterated that he first became aware of his hearing loss in 2016, but did not realize his hearing was worsening until June 2024. Appellant denied other exposure to loud noises.

The employing establishment responded to OWCP's development letter on July 18, 2024 and related that appellant was required to carry a firearm and was required to qualify with that firearm on a quarterly basis at a shooting range. It further reported that he was exposed to noise from his handgun and long guns, including a rifle and a shotgun. The employing establishment noted that appellant wore hearing protection in the form of earmuffs and earplugs and that he last qualified with his firearm on June 11, 2024.

In a follow-up letter dated July 24, 2024, OWCP advised appellant that it had conducted an interim review, and that the evidence remained insufficient to establish his claim. It noted that he had 60 days from the June 26, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated August 26, 2024, OWCP accepted that the employment exposure occurred as alleged, but denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</sup> 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 timely filed within the applicable time limitation of FECA,<sup>3</sup> 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, a claimant must submit: (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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>6</sup>

OWCP's procedures require referral to a second opinion physician in hearing loss cases when the attending physician's examinations and reports do not provide the specific evidence that OWCP requires for adjudication<sup>7</sup> in compliance with the specifications outlined in Federal (FECA) Procedure Manual Chapter 3.0600.<sup>8</sup> This provision specifically requires both an audiological and otological examination by appropriately certified medical professionals.<sup>9</sup>

## ANALYSIS

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

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<sup>2</sup> *Id.*

<sup>3</sup> *A.D.*, Docket No. 20-0758 (issued January 11, 2021); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *V.P.*, Docket No. 20-0415 (issued July 30, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> 20 C.F.R. § 10.115; *S.A.*, Docket No. 20-0458 (issued July 23, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *See B.H.*, Docket No. 18-1693 (issued July 20, 2020); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.9.b(2) (June 2015)

<sup>8</sup> *Id.* at Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600 Exhibits 4-6 (September 1996).

<sup>9</sup> *Id.*

Appellant submitted evidence regarding his hearing loss. While this report is insufficient to meet appellant's burden of proof, it raises an uncontroverted inference of a hearing loss and is sufficient to require OWCP to undertake further development of his claim.<sup>10</sup>

In keeping with its procedures, OWCP should have referred appellant for a second opinion evaluation by an otolaryngologist as well as an additional audiogram. Instead, it failed to develop and evaluate the evidence that he submitted in support of his claim for hearing loss.<sup>11</sup> Further development is therefore required to determine whether appellant is entitled to an additional schedule award for increased hearing loss.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>12</sup>

Accordingly, the Board shall remand the case to OWCP to obtain a second opinion evaluation from an otolaryngologist, which includes audiometric testing, for a fully-rationalized opinion regarding whether appellant developed hearing loss as a result of his federal employment noise exposure. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's hearing loss claim.

### CONCLUSION

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

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<sup>10</sup> *E.C.*, Docket No. 19-1007 (issued November 8, 2019); *J.F.*, Docket No. 16-1225 (issued November 21, 2016); *John J. Carlone*, 41 ECAB 354, 358-60 (1989).

<sup>11</sup> *E.C.*, *id.*; *W.H.*, Docket No. 14-1661 (issued December 24, 2014).

<sup>12</sup> *E.C.*, *id.*; *P.L.*, Docket No. 17-0355 (issued June 27, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 26, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further development consistent with this decision of the Board.

Issued: October 28, 2024  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board