

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

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**J.G., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
RED RIVER DEPOT, Texarkana, TX, Employer**

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**Docket No. 12-1220  
Issued: December 21, 2012**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On May 15, 2012 appellant filed a timely appeal from an Office of Workers Compensation Programs' (OWCP) merit decision dated February 29, 2012 denying his hearing loss claim as untimely filed. The Board docketed the appeal as No. 12-1220.<sup>1</sup>

The Board has considered the matter and finds that OWCP's February 29, 2012 decision must be set aside.

OWCP stated in its February 29, 2012 decision that, "[OWCP's] procedures indicate that an employee may claim an increased schedule award. In some instances, particularly in hearing loss cases, a claim for an additional schedule award will be based on an additional period of exposure. This constitutes a new claim and should be adjudicated as a new claim."<sup>2</sup> Relying on

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<sup>1</sup> Appellant retired from his position in June 2000. In July 2000, he filed for an occupational disease claim, alleging that the high noise environment in his employment had caused hearing loss. Appellant's claim was accepted on December 15, 2000, under OWCP File No. xxxxxx080. On April 6, 2011 appellant filed a recurrence claim, stating that his hearing condition continued to deteriorate after his retirement.

<sup>2</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b)(3) (March 1995).

this doctrine, OWCP then treated appellant's recurrence hearing loss claim as a new claim, and denied it on the grounds that the claim had not been timely filed.

The Board finds that OWCP improperly found that appellant had filed a new, untimely claim. The record indicates that appellant filed a prior claim for an employment-related hearing loss in 2000, which was accepted for hearing loss in 2000. A schedule award for hearing loss was granted by decision dated April 10, 2001. The evidence establishes that appellant retired from the employing establishment in June 2000.

The Board has repeatedly held that a claim for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.<sup>3</sup> Based on the evidence of record, this is a claim for additional hearing loss, based on the progression of the condition without new exposure. As such, this case will be remanded for a *de novo* decision on the merits of the claim consistent with this order.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 29, 2012 decision be set aside and the case remanded for further action consistent with this order of the Board.

Issued: December 21, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>3</sup> See *B.K.*, 59 ECAB 228 (2007); *A.R.*, Docket No. 12-690 (issued September 12, 2012).