

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

R.J., Appellant)	
)	
and)	Docket No. 20-1222
)	Issued: February 23, 2021
DEPARTMENT OF THE ARMY, ANNISTON)	
ARMY DEPOT, Anniston, AL, 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
PATRICIA H. FITZGERALD, Alternate Judge

On May 13, 2020 appellant filed a timely appeal from a March 19, 2020 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1222.¹

On September 5, 2019 appellant, then a 63-year-old crane operator, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss and ringing in both ears, as well as pressure in his left ear, due to factors of his federal employment, including constant noise exposure. He indicated that he first became aware of his condition on January 6, 2011 and first realized that it was caused or aggravated by his employment on May 11, 2017. In a July 15, 2019 supplemental statement, appellant indicated that he experienced an aggravation of previous hearing loss due to noise at work. OWCP assigned the claim File No. xxxxxx392. On January 23, 2020 it accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

¹ The Board notes that following the March 19, 2020 decision, OWCP received additional evidence. However, 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 evidence for the first time on appeal. *Id.*

On January 30, 2020 appellant filed a claim for a schedule award (Form CA-7).

On March 19, 2020 OWCP granted appellant a schedule award for one percent binaural hearing loss. The period of the award ran two weeks, from November 20 to December 3, 2019. OWCP noted that appellant was previously granted a schedule award for three percent binaural hearing loss. A copy of an April 26, 2017 schedule award decision, issued under OWCP File No. xxxxxx524, for three percent binaural hearing loss was made part of the record in the current case file.

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

On August 28, 2015 appellant filed an occupational disease claim (Form CA-2) for binaural hearing loss due to factors of his federal employment, including exposure to noise from disassembling army tanks. OWCP assigned the claim File No. xxxxxx524. On March 29, 2017 it accepted the claim for bilateral sensorineural hearing loss, and on April 26, 2017 OWCP granted appellant a schedule award for three percent binaural hearing loss.

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.² As the instant claim under OWCP File No. xxxxxx392 and the claim under OWCP File No. xxxxxx524 both involve binaural hearing loss, these claims must be administratively combined for a full and fair adjudication.³ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's current schedule award claim.

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx392 and xxxxxx524. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

³ *S.D.*, Docket No. 19-0590 (issued August 28, 2020).

IT IS HEREBY ORDERED THAT the March 19, 2020 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: February 23, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board