

On May 1, 2009 appellant, then a 75-year-old retired rigger, filed an occupational disease claim alleging that he sustained hearing loss due to noise exposure while employed as a rigger and rigger foreman.

Appellant and the employing establishment supplied audiometric records for the period August 13, 1970 to May 1, 2009. An August 13, 1970 employing establishment audiogram showed the following decibel (dBA) losses at frequencies of 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hertz (Hz): 20, 20, 20, 30, 40 and 40 for both ears. Employing establishment audiograms dated August 23, 1983, June 29 and September 6, 1989 noted significant threshold shifts exceeding 20 dBA. A December 18, 1990 employing establishment audiogram showed the following dBA losses at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz: 15, 25, 5, 20, 35 and 25 for the right ear and 20, 25, 5, 30, 35 and 30 for the left ear.

In a May 4, 2009 report, Dr. Richard W. Seaman, a Board-certified otolaryngologist to whom appellant was referred by a hearing aid clinic, stated that he complained of occupational hearing loss that began in or around 1974. He detailed that appellant was with the employing establishment between 1965 and 1991, worked in a noisy environment due to the nature of his job and did not normally wear ear protection. Appellant previously served in the military between 1952 and 1956 and hunted game until 2004. He denied any history of ear injury or exposure to loud noise since his retirement. Dr. Seaman stated that he did not review appellant's prior medical records as they were unavailable. He examined appellant and did not observe any physical abnormalities. Dr. Seaman noted that a May 1, 2009 audiogram showed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 35, 35, 10 and 45 for the right ear and 35, 40, 10 and 50 for the left ear. He diagnosed bilateral low frequency hearing loss due to presbycusis and bilateral high frequency hearing loss caused primarily by occupational noise exposure and, to a smaller degree, gunfire exposure. Dr. Seaman recommended hearing aids.

A September 11, 2009 statement of accepted facts listed that appellant was exposed to loud noise at the employing establishment generated by chipping hammers, grinders, saws, trucks and cranes for eight hours a day as an electrician helper between 1959 and 1960, by chainsaws, cranes, pile drivers, bulldozers and jackhammers for eight hours a day as a rigger between 1965 and 1974 and by chipping guns, grinders, sanders, cranes, trucks and ventilation fans for four hours a day as a foreman between 1974 and 1991. He was also exposed to noise aboard ships while enlisted in the Navy between 1952 and 1956. Appellant did not use protective ear wear.

In a September 11, 2009 letter, the Office requested a supplemental opinion from Dr. Seaman. It provided him with the statement of accepted facts and copies of appellant's employing establishment audiograms. The Office asked Dr. Seaman to address the causal relationship between appellant's hearing loss and noise exposure at the workplace.

The employing establishment controverted appellant's claim on September 24, 2009, contending that appellant "was informed of his hearing loss while employed through yearly physicals and at the time of his retirement" and untimely filed his claim after he retired.

In an October 1, 2009 report, Dr. Seaman remarked that the earliest available audiogram dated August 13, 1970 demonstrated that appellant's hearing was normal at that time. He added that the audiogram performed on December 18, 1990, around the time of appellant's retirement, indicated that his hearing was "in essence within normal limits" with slight high frequency loss

found in the left ear.¹ On the basis of these industrial audiograms, Dr. Seaman opined that appellant sustained some hearing loss from work-related noise exposure, but noted that the loss was not significant and that “no impairment rating existed” at the time of retirement. He pointed out that the May 1, 2009 audiogram exhibited significant subsequent hearing loss and concluded that appellant’s present condition was not caused by federal occupational noise exposure. Dr. Seaman elaborated that exposure to firearm noise likely contributed to greater, asymmetrical loss in appellant’s left ear. He concluded that, based on a review of occupational audiograms and appellant’s history of firearm exposure, appellant had hearing loss but that it was not due to occupational noise damage during federal civilian employment.

By decision dated October 16, 2009, the Office denied appellant’s claim, finding that the medical evidence was insufficient to demonstrate a causal relationship between his hearing loss condition and employment-related noise exposure.

On November 5, 2009 appellant requested a review of the written record, maintaining that his injury was the result of 26 years of noise exposure at the workplace. He stated that his baseline was revised because of his hearing loss and his audiograms showed that he sustained this loss before his retirement. Appellant also asserted that he fired only one or two shots annually when he hunted.

By decision dated March 22, 2010, the Office hearing representative affirmed the October 16, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ 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.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an

¹ The Board notes that Dr. Seaman identified this audiogram initially as the “audiogram done at about [1991]” and later as “the audiogram of 1991.” There are no 1991 audiograms of record. However, appellant’s last audiogram prior to his retirement was conducted by the employing establishment less than two months earlier on December 18, 1990. Dr. Seaman was likely referring to this industrial audiogram as it not only was within the temporal proximity of appellant’s retirement but also matched the diagnostic account in his report.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

occupational disease claim, an employee 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) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁷

ANALYSIS

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

The evidence supports that appellant sustained hearing loss, he was routinely exposed to loud noise at the workplace generated by industrial equipment and machinery from 1959 until his retirement on February 1, 1991 and the employing establishment was aware of his condition through annual physical audiograms. The medical evidence of record provides support that a portion of appellant's hearing loss is employment related.

Dr. Seaman's May 4, 2009 report attributed appellant's bilateral high frequency hearing loss to occupational noise exposure based on his history and the May 1, 2009 audiogram. He advised that he did not review appellant's prior audiometric records or otherwise provide reasoning for his opinion.⁸ Subsequently, on September 11, 2009 the Office requested a supplemental medical report from Dr. Seaman and provided him with appellant's industrial audiograms and a statement of accepted facts for review. In his October 1, 2009 report, Dr. Seaman commented that appellant's hearing was normal on or around August 13, 1970, the date of the earliest audiogram, was essentially stable aside from high frequency loss in the left ear before his retirement in 1991 and depreciated considerably afterward. While he concluded that appellant's hearing loss after his retirement was not caused by federal occupational noise exposure, Dr. Seaman nonetheless opined that appellant sustained some hearing loss from work-related noise exposure. The Office did not request that Dr. Seaman clarify this apparent inconsistency.

Office procedures provide that, in hearing loss claims, a claimant should be referred to a qualified specialist for audiological evaluation and otological examination addressing the relationship of any employment-related hearing loss and the degree of permanent impairment if

⁶ See *R.R.*, 60 ECAB ____ n.12 (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 4 at 352.

⁸ See *M.W.*, 57 ECAB 710 (2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (medical opinion not fortified by medical rationale is of little probative value).

the medical report submitted by the claimant does not meet its requirements for adjudication.⁹ Here, Dr. Seaman's opinion did not address the inconsistency in his October 1, 2009 report in which he found that appellant had some work-related hearing loss at the time of retirement but where he also concluded that his hearing loss was not due to occupational noise damage.¹⁰ In light of this, the Office should have requested further clarification for Dr. Seaman or referred appellant for a second opinion.

On appeal, appellant asserts that his condition was worsened by his workplace noise exposure. He states that he does not seek monetary compensation but wants the claim accepted so that the Office may provide him with hearing aids. As the case is remanded for further medical development, this aspect of his claim is in an interlocutory posture.¹¹

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant sustained an occupational hearing loss.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.5(a)(3) (September 2010) & Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (March 2010).

¹⁰ Dr. Seaman noted that the work-related hearing loss that appellant sustained at the time of his retirement was "not significant." It is well established that when a factor of employment aggravates, accelerates or otherwise combines with a preexisting, nonoccupational pathology, the employee is entitled to compensation. Further, it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship. *Kathleen M. Fava*, 49 ECAB 519 (1998).

¹¹ See 20 C.F.R. § 501.2(c)(2).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2010 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: February 14, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board