

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

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**J.M., Appellant**

**and**

**DEPARTMENT OF THE NAVY, PUGET  
SOUND NAVAL SHIPYARD, Bremerton, WA,  
Employer**

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**Docket No. 13-1956  
Issued: February 5, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On August 12, 2013 appellant filed a timely appeal from a July 18, 2013 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 sustained an employment-related hearing loss.

**FACTUAL HISTORY**

On March 4, 2013 appellant, then a 64-year-old data control clerk, filed an occupational disease claim for compensation (Form CA-2) alleging a hearing loss causally related to his federal employment. He became aware of hearing loss on December 10, 2012. By letters dated

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

March 5, 2013, OWCP requested additional information from appellant and the employing establishment with respect to the claim.

On March 15, 2013 OWCP received an employment history that appellant worked from 1974 to 1977 as an electrician at the National Oceanic and Atmospheric Administration (NOAA) and then worked at the employing establishment commencing 1977 in various positions as an electrician, scheduler and dispatcher.<sup>2</sup> The medical evidence included annual audiograms obtained by the employing establishment's hearing loss conservation program.

In a report dated February 13, 2013, Dr. Richard Seaman, an otolaryngologist, provided a history and noted that appellant complained of decreased hearing and tinnitus. He noted that appellant was examined and an audiogram performed on February 13, 2013 and the results were valid. According to Dr. Seaman, appellant brought occupational testing results with him and they revealed that appellant had significant hearing loss when he began work at the employing establishment in 1977. He stated that the left ear had always been worse than the right ear. Dr. Seaman stated that appellant's "hearing loss appears to be due to occupational noise damage. Tinnitus is also due to the same etiology. No other significant contributory factors are noted." Dr. Seaman stated that the contributory were the employing establishment and the prior employment at NOAA and the impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition) was 3.75 percent for the left ear and 0 percent for the right ear. He also concluded that the need for hearing aids, on a more probable than not basis, was related to occupational noise damage both at NOAA and then that hearing loss contributed by his employment at the employing establishment.

In a letter dated April 9, 2013, OWCP asked Dr. Seaman to review a statement of accepted facts (SOAF) and industrial audiograms and provide an opinion as to whether hearing loss was causally related to the industrial noise exposure. By report dated April 22, 2013, Dr. Seaman stated that appellant's hearing "at the beginning of federal civilian employment in 1977" showed significant bilateral high-frequency hearing loss. He then stated that considering the first measured hearing loss, the current hearing loss would not be in excess of what would be predicted based on presbycusis. Dr. Seaman stated that the workplace noise exposure was significant enough in duration and intensity to cause hearing loss, but there was no evidence of this in the current case. He concluded, "This sensorineural hearing loss in all likelihood is not due to noise damage during federal civilian employment. It did preexist federal civilian employment. The rational[e] for this statement is based on review of his audiometry over the years."

By decision dated July 18, 2013, OWCP denied the claim for compensation. It found the medical evidence from Dr. Seaman did not establish causal relationship between hearing loss and federal employment.

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<sup>2</sup> An April 25, 2013 letter from the employing establishment indicated that appellant retired effective January 3, 2013.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.<sup>3</sup> Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.<sup>4</sup>

### **ANALYSIS**

In the present case, OWCP found that the medical evidence from Dr. Seaman did not establish causal relationship between appellant's hearing loss and federal employment. A review of both the February 18 and April 22, 2013 reports from Dr. Seaman indicate that the issue of causal relationship was not properly resolved. In the February 18, 2013 report, Dr. Seaman noted that appellant had brought medical records of audiological testing and he reported that appellant had significant hearing loss in 1977. He opined that appellant's occupational noise exposure appeared to have contributed to his hearing loss.

OWCP further developed the evidence and requested an additional report from Dr. Seaman. In the April 22, 2013 report, Dr. Seaman provided a different opinion, stating that appellant had a preexisting hearing loss with no contribution from his federal employment. He did not adequately state his opinion on causal relationship. The Board notes that in the April 22, 2013 report, Dr. Seaman stated that appellant's federal employment began in 1977. The record indicates that appellant worked in federal employment from 1974, and was exposed to noise during that time, as reflected in the SOAF. Dr. Seaman noted noise exposure at NOAA in his February 18, 2013 report, but did not discuss the issue in his subsequent report. Moreover, he did not discuss the audiometric results or explain why he concluded there was no contribution from federal employment noise exposure.

The Board finds that the record requires further development. OWCP asked Dr. Seaman for an opinion on causal relationship, but he did not provide sufficient explanation for his stated conclusion.<sup>5</sup> The case will be remanded to OWCP to secure medical evidence that properly addresses the issue of the causal relationship between appellant's hearing loss and his federal employment. After such further development as OWCP deems necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision and is remanded to OWCP for further development of the medical evidence.

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<sup>3</sup> *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

<sup>4</sup> *See John W. Butler*, 39 ECAB 852, 858 (1988).

<sup>5</sup> OWCP shares responsibility in developing the evidence, and once it begins to procure medical opinion evidence, it must do a complete job. *Richard F. Williams*, 55 ECAB 343, 346 (2004); *see also R.K.*, Docket No. 07-801 (issued July 6, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 18, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: February 5, 2014  
Washington, DC

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

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

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