

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

R.N., Appellant	)	
	)	
and	)	<b>Docket No. 12-1003</b>
	)	<b>Issued: September 10, 2012</b>
TENNESSEE VALLEY AUTHORITY,	)	
Harriman, TN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On April 5, 2012 appellant filed a timely appeal from a February 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his hearing loss claim. 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 has established that he sustained hearing loss causally related to factors of his federal employment.

**FACTUAL HISTORY**

On May 4, 2011 appellant, then a 51-year-old compliance and analysis manager, filed a notice of occupational disease, alleging that his hearing loss was caused by factors of his federal employment. He stated that he had developed bilateral hearing loss by December 28, 2010, as a result of working for Tennessee Valley Authority for 33 years while exposed to hazardous noise.

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

By letters dated June 6, 2011, OWCP requested that appellant and the employing establishment provide further information regarding appellant's exposure to hazardous noise.

In response on June 24, 2011, OWCP received from appellant a summary of his employment history, and exposure to hazardous noise. It also received on July 25, 2011 a letter from appellant's supervisor, who noted that appellant worked for him from August 16, 2009 until January 3, 2011, and that appellant was not exposed to any hazardous noise during that time period. Appellant's employing establishment health unit records, including audiograms, were also submitted to record.

On September 2, 2011 OWCP prepared a statement of accepted facts. This statement of accepted facts related that appellant had been employed in a variety of positions at the employing establishment from 1978 until 2011. Appellant was required to work around heavy equipment noise, air compressors, electrical breakers, turbine generators, high pressure relief valves and engraving tools, with noise levels in the range of 60 to 93 decibels for eight hours a day, five days a week.

OWCP referred appellant, the statement of accepted facts, a copy of the medical record and specific questions to Dr. H. Grady Arnold Jr., a Board-certified otolaryngologist, for a second opinion evaluation. The evaluation was conducted on September 21, 2011. In his report, Dr. Arnold noted that appellant's hearing at the beginning of his noise exposure was "entirely within normal limits," and that the audiogram done at retirement reveals "bilateral flat moderately severe to severe sensorineural hearing loss." He checked a box on a form indicating that appellant's workplace exposure was insufficient in duration and intensity to have caused the hearing loss. Dr. Arnold explained that the pattern of the hearing loss was not typical for noise-induced hearing loss, and the severity of the hearing loss could not be due to his noise exposure. He also opined that the audiometric test results are invalid and not representative of appellant's hearing sensitivity, as the test showed no agreement between speech reception threshold and pure tone responses, and that he could offer no explanation for the air-bone gap or asymmetry. Dr. Arnold recommended an auditory brainstem response (ABR) evaluation be conducted.

In an addendum report dated November 15, 2011, Dr. Arnold indicated that a review of the "DPOAE" indicated normal hearing in the low frequency regions sloping to a high frequency hearing loss in each ear. He concluded that the high-frequency hearing loss was consistent with noise-induced hearing loss.

On November 21, 2011 OWCP received the results of the auditory brainstem response study. This study was interpreted by Audiologist Tabitha Rossini as revealing behavioral results suggesting moderate-to-severe functional hearing loss in each ear, and ABR test results indicating normal hearing sloping to a moderately severe sensorineural high frequency loss. Ms. Rossini concluded that these findings also supported a positive history of noise exposure.

By decision dated November 30, 2011, OWCP denied appellant's claim on the grounds that the medical evidence did not establish his hearing loss was causally related to his federal employment.

On January 20, 2012 appellant requested reconsideration and alleged that the November 30, 2011 decision failed to reference the November 15, 2011 addendum report issued by Dr. Arnold.

OWCP referred appellant's case file to the district medical adviser to review the medical evidence of record. In a report dated January 30, 2012, the district medical adviser explained that the hearing loss could not be determined to be work related as the audiologic examination was not valid. He noted that the pattern of hearing loss recorded was atypical of noise-induced hearing loss, that the workplace exposure was not "felt" sufficient to cause the loss in question. The district medical adviser also noted that the ABR result indicated normal hearing to a moderately severe sensorineural high frequency loss in each ear, which was at variance with appellant's responses at second opinion evaluation. He concluded that he agreed with the second opinion physician that appellant's hearing examination results were not valid, and were not the result of acoustic trauma in the workplace. In a January 31, 2012 addendum report, the district medical adviser reviewed the November 15, 2001 addendum form the second opinion physician and stated that, while the high frequency loss was consistent with noise-induced hearing loss, it was the lower thresholds values that are used to calculate ratability for schedule award purposes.

On February 23, 2012 OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to show that his hearing loss is causally related to noise exposure at his federal employment.

### **LEGAL PRECEDENT**

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>2</sup>

In order to establish an employment-related hearing loss, OWCP requires that the employee undergo both audiometric and otologic examinations; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing

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<sup>2</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

Association; that the audiometric test results included both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist report must include: date and hour of examination, date and hour of the employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.<sup>3</sup> The physician should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.<sup>4</sup>

Proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.<sup>5</sup>

### ANALYSIS

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

OWCP prepared a statement of accepted facts on September 2, 2011 which related that appellant had been exposed to noise levels in the range of 60 to 93 decibels during his 33-year course of federal employment. The Board has previously explained that noise levels of 85 decibels or greater are considered hazardous.<sup>6</sup> Dr. Arnold, a second opinion physician, evaluated appellant on September 11, 2011. While, in his initial report, he opined that the pattern of appellant's hearing loss was not typical for noise-induced hearing loss and the severity of the loss could not be due to his noise exposure, he also recommended that appellant undergo auditory brainstem response evaluation. After appellant underwent the ABR evaluation, Dr. Arnold provided a supplemental report in which he concluded that appellant's high frequency hearing loss was consistent with noise-induced hearing loss. However, he did not discuss whether the levels of noise exposure to which appellant was exposed, as stated in the statement of accepted facts, could have contributed to his addendum finding of noise-induced hearing loss. OWCP's medical adviser thereafter reviewed the record. While the district medical adviser opined in his January 30, 2012 report that he agreed with Dr. Arnold's conclusions in his September 11, 2011 report, that appellant's hearing tests were not valid and were his loss of hearing was not related to "trauma" in the workplace, OWCP requested that he clarify his report. In an addendum report of January 31, 2012, he then related that, while appellant's high frequency loss was consistent with noise-induced hearing loss, it was the lower thresholds that were used to calculate ratability. The district medical adviser did not provide a rationalized medical opinion reviewing the accepted decibels of noise exposure, as provided in the statement of accepted facts, and he did not explain whether this noise exposure contributed to

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<sup>3</sup> *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993). See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(3) (September 1994).

<sup>5</sup> *John W. Butler*, 39 ECAB 852 (1988).

<sup>6</sup> See *James L. McLeod*, Docket No. 03-1954 (issued January 13, 2004); see also *Jack E. Vaught*, Docket No. 04-277 (issued June 9, 2004).

any hearing loss, as found in the auditory brainstem response evaluation. His opinion that appellant's "higher" frequency hearing loss, but not his "lower" frequency loss was noise related was vague and unrationalized.

The Board notes that a claim for hearing loss can be accepted and payment of medical expense, including hearing aids authorized, even if appellant has no ratable hearing loss.<sup>7</sup> This case must therefore be remanded for further development of the medical opinion evidence. OWCP shall obtain a second opinion report which fully addresses the issue of causal relationship. After such further development of the evidence as necessary, OWCP shall issue an appropriate decision.

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2012 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: September 10, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> See *Thomas O. Bouis*, 57 ECAB 602 (2006).