

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

aware of his condition on September 15, 2011 and realized that it was caused or aggravated by his employment on that date. Appellant did not stop work.

By letters dated December 4, 2012, OWCP advised appellant and the employing establishment that additional factual and medical evidence was needed. It allotted him 30 days within which to submit the requested information.

In a December 6, 2012 response, appellant explained that he had no prior claims for a hearing or ear condition, no previous ear or hearing problems and no hobbies involving noise exposure. The employing establishment provided additional evidence which included his employment history and audiograms dated April 21, 1997 to October 11, 2012. The employment history revealed that appellant worked for the employing establishment since 1996 as a welder, with noise exposure to bay flex grinders, welders, sandblasters, chipping guns, diesel motors and cranes for eight hours a day with hearing protection. Appellant was also exposed to noise in private industry in the construction field and as a welder in the military.

In a November 13, 2012 second opinion report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist to whom appellant was referred by the employing establishment, reviewed appellant's history of injury and treatment. Appellant noticed hearing loss during the past five years but did not have tinnitus or vertigo. Dr. Randolph advised that appellant did not have a history of ear infection; however, he might have had a skull fracture when he was nine years old. Appellant was not hospitalized, no surgery was performed and it did not cause apparent hearing loss. Dr. Randolph noted that appellant did not use hearing aids. On examination, the external auditory canals and tympanic membranes were normal. Dr. Randolph advised that the air conduction was greater than bone conduction bilaterally. He noted that audiometrics were performed by an audiologist and the findings revealed a bilateral high frequency sensorineural hearing loss with speech reception thresholds of 15 decibels in both ears. Dr. Randolph determined that discrimination scores were measured at 88 percent in the right ear and 96 percent in the left ear when measured in noise. He diagnosed sensorineural hearing loss and noted that the audiologist was unable to get a tympanograms due to the lack of seal. Appellant's audiogram revealed hearing loss with an audiometric configuration compatible with past noise exposure. Dr. Randolph utilized the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2008) (A.M.A., *Guides*) to determine that appellant did not have a ratable hearing loss in either ear. He noted that appellant was a candidate for bilateral hearing aids. Appellant's industrial audiograms revealed that the hearing loss increased in severity, particularly in the right ear, in a manner consistent with hearing loss aggravated by noise exposure. Dr. Randolph explained that the hearing loss in the left ear had not progressed in severity any more than that which would be expected on the basis of presbycusis since April 21, 1997. November 6, 2012 audiological findings accompanied the report.

By letter dated February 11, 2013, OWCP provided Dr. Randolph a statement of accepted facts, its requirements for evaluating hearing loss and asked that he provide additional information regarding the cause and extent of appellant's hearing loss.

In a February 25, 2013 addendum, Dr. Randolph noted that he did not vary from the statement of accepted facts. The earliest audiogram in appellant's record was dated

April 21, 1997 and revealed bilateral sensorineural hearing loss ratable at zero percent in both ears utilizing the A.M.A., *Guides*. Dr. Randolph explained that between the audiogram performed on April 21, 1997 and her audiogram of November 6, 2012, there was a very slight increase in hearing loss in those frequencies affected by noise. The increase in appellant's hearing loss was no greater than that which would be expected on the basis of presbycusis. Dr. Randolph stated that "the workplace exposure as described in the material provided was of sufficient intensity to have caused and or aggravated appellant's hearing loss if ear protection had been inadequately utilized." He did not find any significant contributing factors to appellant's hearing loss other than the aging process and no conductive component was present. Dr. Randolph listed examination findings and stated that there was no indication of any medical condition such as acoustic neuroma or Meniere's disease. He opined that the hearing loss had an audiometric configuration compatible due to hearing loss due to noise exposure. Dr. Randolph explained that the sensorineural hearing loss was "not due to noise exposure encountered" in appellant's employment as "the hearing loss increased no greater than that which would be expected on the basis of presbycusis during that employment." He completed a form report indicating that appellant's hearing loss was not due to workplace noise exposure.

By decision dated April 4, 2013, OWCP denied appellant's claim. It found that the medical evidence did not establish that the claimed hearing loss was employment related. OWCP noted that Dr. Randolph determined that appellant's hearing loss was not due to noise exposure in his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> 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.<sup>3</sup>

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 medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's

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<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>4</sup>

### ANALYSIS

It is not disputed that appellant was exposed to work-related noise while working as a welder at the employing establishment. The Board finds that the medical evidence of record does not establish that his hearing loss is causally related to the accepted employment-related noise exposure.

In a November 13, 2012 report, Dr. Randolph, a Board-certified otolaryngologist and treating physician, noted appellant's history of noise exposure and treatment. He stated that audiometric testing was performed that revealed a bilateral high frequency sensorineural hearing loss with an audiometric configuration compatible with hearing loss largely due to past noise exposure but that was not ratable under the A.M.A., *Guides*. Dr. Randolph noted that appellant's industrial audiograms revealed that the hearing loss increased in severity, particularly in the right ear, in a manner consistent with hearing loss aggravated by noise exposure. He explained that the hearing loss in the left ear had not progressed in severity any more than that which would be expected on the basis of presbycusis since April 21, 1997.

On February 11, 2013 OWCP provided Dr. Randolph with a statement of accepted facts and requested a supplemental opinion on causal relation of appellant's hearing loss. In a February 25, 2013 addendum, Dr. Randolph explained that the earliest audiogram in appellant's record was dated April 21, 1997 and revealed a nonratable bilateral sensorineural hearing loss. From April 21, 1997 to a November 6, 2012 audiogram, there was only a very slight increase in hearing loss in those frequencies affected by noise. Dr. Randolph explained that the extent of hearing loss was no greater than that which would be expected on the basis of presbycusis. While the hearing loss had an audiometric configuration compatible with noise exposure, he found that appellant's sensorineural hearing loss was not due to noise exposure encountered federal employment. Dr. Randolph explained that appellant's hearing loss increased no greater than that which would be expected on the basis of presbycusis during that employment.

The Board finds that the medical evidence does not support that appellant has any hearing loss causally related to the accepted employment-related noise exposure. Dr. Randolph examined appellant, reviewed audiological records and opined that appellant's hearing loss was not due to workplace noise exposure. He explained that appellant's audiograms had not changed much since April 1997 and that the changes were observed consistent with the aging process of presbycusis. There is no other medical evidence to support that appellant's hearing loss is employment related. Dr. Randolph has not established that his hearing loss is causally related to employment factors.

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<sup>4</sup> *Id.*

On appeal, appellant contends that his hearing loss was causally related to workplace noise exposure. As noted, the medical evidence from Dr. Randolph does not support this contention. The Board notes that appellant may submit evidence or argument with a written request for reconsideration within one year of this merit decision pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an employment-related hearing loss in the performance of duty, causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2014  
Washington, DC

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

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

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