

FACTUAL HISTORY

On December 22, 2014 appellant, then a 63-year-old electrician leader, filed an occupational disease claim (Form CA-2) alleging that on December 16, 2014 he first became aware of his bilateral hearing loss and first realized that his condition was caused or aggravated by his exposure to high noises, motors, and pumps at work.

By letter dated January 8, 2015, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual evidence in support of his claim. OWCP also requested that the employing establishment respond to appellant's allegations and provide noise survey reports for each site where he worked, the sources and period of noise exposure for each location, whether he wore ear protection, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

In a January 27, 2015 letter, appellant provided his employment history which reflected noise exposure from 1971 to 1980 during his military service and work at a private ironworks company. He stated that he was exposed to noise from 1984 to the present at the employing establishment. Appellant did not have any previous ear or hearing problems and had no hobbies that exposed him to loud noise.

Appellant submitted audiograms performed by the employing establishment as part of a hearing conservation program dated September 21, 1984 through December 23, 2013. He also submitted employment records, which included a description of his electrician leader position.

By letter dated April 30, 2015, OWCP informed appellant of his referral for a second opinion evaluation with a physician who specialized in otolaryngology, along with a statement of accepted facts, a set of questions, and the medical record. Appellant was instructed to telephone MES Solutions to confirm the appointment.

In a letter dated May 4, 2015, OWCP scheduled a second opinion evaluation for appellant with Dr. Thomas J. Mueller, a Board-certified otolaryngologist, for May 27, 2015 at 10:30 a.m. In his May 27, 2015 medical report, Dr. Mueller noted finding on examination. Appellant's chief complaint was bilateral hearing loss that had occurred gradually over the years. Dr. Mueller provided appellant's history of working as an electrician for 30 years around ships, namely pump motors and compressed air pumps and that he did wear hearing protection. Appellant claims tinnitus with questionable impact, but denied vertigo. Dr. Mueller insured that it had been greater than 16 hours since his last noise exposure. He reported that appellant's ability to hear during the interview was good. An inspection of the ear canals showed scant cerumen and no tympanic membrane retractions, granulations, debris pockets, or middle ear fluid. Tuning fork tests were Weber midline and a Rinne test was positive bilaterally. A May 27, 2015 audiogram, with an attached calibration certificate, showed hearing levels at 500, 1,000, 2,000, and 3,000 hertz respectively of 10, 10, 5, and 20 decibels (dB) on the right and 15, 15, 15, and 50 dB on the left. Dr. Mueller found that the audiometric testing showed a sensorineural hearing loss, left side slightly greater than the right side. He stated that appellant had no hearing loss at the beginning of his federal employment, but now there was evidence of significant high frequency sensorineural hearing loss. Dr. Mueller stated that the workplace

exposure, as described by appellant, was insufficient intensity and duration to have caused or contributed to the hearing loss in question. His hearing loss could represent an age-related change. Appellant had hypertension, but no diabetes, local infection, toxic drug use, or surgery relating to the hearing loss in question. Dr. Mueller opined that appellant's sensorineural hearing loss was not due to his federal civilian employment. He recommended hearing aids to help with the rehabilitation of hearing loss, which was impactful, and tinnitus. Dr. Mueller stated, however, that the recommended hearing aids were not due to occupational noise exposure.

In a June 4, 2015 decision, OWCP denied appellant's hearing loss claim. It found that Dr. Mueller's opinion constituted the weight of the evidence and established that he did not have hearing loss due to his accepted employment-related noise exposure.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, 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.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.³

OWCP procedures set forth requirements for the medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and 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 and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Further, all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report is to include: date and hour of examination; date and hour of 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.⁴ The physician

² *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See I.J.*, 59 ECAB 408 (2008); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe that the claimant is malingering.⁵

ANALYSIS

The Board finds that appellant has not established binaural hearing loss causally related to his federal employment noise exposure.

In support of his claim, appellant submitted audiograms for the period September 21, 1984 to December 23, 2013 obtained as part of the hearing conservation program at work. None of the audiograms were accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss.⁶ This does not constitute probative medical opinion evidence and is insufficient to meet his burden of proof.⁷

Following the submission of evidence from appellant, OWCP referred appellant for an audiological and otologic evaluation by Dr. Mueller. In a May 27, 2015 report, Dr. Mueller provided physical examination and audiometric findings that indicated that appellant had sensorineural hearing loss that was slightly greater on the left than on the right and tinnitus. However, he concluded that his hearing loss and need for hearing aids were not due to work-related noise exposure. Dr. Mueller explained that the workplace exposure, as described by appellant, was not of sufficient intensity and duration to have caused or contributed to his diagnosed hearing loss. He further explained that his hearing loss could represent an age-related change. Dr. Mueller provided a thorough examination and a reasoned opinion explaining his findings on examination and testing that any hearing loss was not due to the noise to which appellant was exposed at his employment.

There is no current medical evidence of record supporting that appellant's hearing loss is employment related. The Board finds that Dr. Mueller's report represents the weight of the medical evidence.⁸ Appellant has failed to establish that his binaural hearing loss was due to his federal employment.

On appeal appellant contends that his hearing has consistently declined as a result of his exposure to noise from various types of equipment while working at the employing establishment for 31 years. As previously stated, however, the weight of the medical evidence fails to establish that his hearing loss was causally related to his accepted employment-related noise exposure. The Board finds, therefore, that appellant has not established that he has an employment-related hearing loss.

⁵ *Luis M. Villanueva*, 54 ECAB 666 (2003). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995).

⁶ See *Leon Thomas*, 52 ECAB 202 (2001) (an audiologist is not as a "physician" under FECA).

⁷ See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

⁸ See *John D. Jackson*, 55 ECAB 465 (2004).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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 did not meet his burden to proof to establish binaural hearing loss causally related to his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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