



became aware of his condition in February 1988 and first related it to his federal employment on January 8, 1990.

In a December 6, 2007 letter, the Office advised appellant of the type of additional evidence needed to establish his claim. It instructed appellant to submit audiometric findings and other test results from his attending physician.

Appellant submitted annual employing establishment audiograms from 1969 to 1990 obtained through an employing establishment hearing conservation program.<sup>1</sup> A May 10, 1983 audiogram showed a bilateral low frequency hearing loss. Appellant was advised to see his private physician. February 13, 1990 audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 40, 25, 15 and 10 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 35, 20, 10 and 30 decibels.

In a February 7, 2008 letter, appellant noted that from 1947 to 1968, he was exposed to aircraft engine noise as a mechanic in military service. He submitted January 14, 2008 forms from Dr. J. Philip Mahaney, an attending Board-certified otolaryngologist, who diagnosed a bilateral sensorineural hearing loss and prescribed hearing aids.

On March 3, 2008 the Office referred appellant to Dr. Charles B. Beasley, a Board-certified otolaryngologist, for a second opinion evaluation. A statement of accepted facts and the medical record were provided for the physician's review.

In a March 31, 2008 report, Sue M. Bain, an audiologist working with Dr. Beasley, noted audiometric findings. Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 40, 30, 30 and 50 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 35, 35 and 45 decibels. Tympanometry was normal bilaterally. Dr. Beasley submitted a March 31, 2008 report reviewing the audiometric findings and medical record. He diagnosed a bilateral high frequency sensorineural hearing loss. Dr. Beasley opined that the high frequency hearing loss was not work related as it developed after appellant retired in June 1990.

By decision dated April 8, 2008, the Office denied appellant's claim on the grounds that causal relationship was not established. It accepted that appellant was exposed to hazardous noise in the performance of duty. The Office found that Dr. Beasley, the second opinion physician, explained that the claimed hearing loss was not work related as it developed after appellant retired from federal employment.

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<sup>1</sup> The Board has held that a program of annual audiometric examination conducted by an employing establishment in conjunction with an employee testing program is sufficient to constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury. See *James A. Sheppard*, 55 ECAB 515 (2004). Appellant participated in a hearing conservation program from 1969 through February 1990. A May 10, 1983 annual audiogram revealed significant abnormalities. An employing establishment physician therefore advised appellant to see his private physician. Accordingly, the claim is timely.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</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) 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 is generally 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 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>5</sup>

## ANALYSIS

Appellant claimed that he sustained a bilateral high frequency sensorineural hearing loss in the performance of duty on or before February 1, 1988 in the performance of duty. Dr. Mahaney, an attending Board-certified otolaryngologist, diagnosed a bilateral sensorineural hearing loss. Appellant has thus met the first element of his burden of proof by establishing the presence of the claimed condition. The Office accepted as factual that appellant's duties as mechanic entailed prolonged exposure to hazardous noise. Appellant has thus met the second element of his burden of proof. To meet the third element, he must submit sufficient medical evidence to establish the claimed causal relationship between the diagnosed hearing loss and the accepted work factors.

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

Appellant submitted notes from Dr. Mahaney diagnosing a bilateral sensorineural hearing loss and prescribing hearing aids. Dr. Mahaney did not provide medical rationale explaining how and why the accepted work factors would cause the diagnosed hearing loss. Therefore, his opinion is of little probative value in establishing causal relationship.<sup>6</sup>

Dr. Beasley, a Board-certified otolaryngologist and second opinion physician, opined in a March 31, 2008 report that appellant's bilateral high frequency sensorineural hearing loss was not work related as it developed after appellant retired from federal employment. Dr. Beasley's opinion thus negates the claimed causal relationship.

The Board finds that appellant did not submit sufficient medical evidence establishing a causal relationship between hazardous noise exposure at work and the diagnosed high frequency hearing loss. Dr. Mahaney did not provide medical rationale supporting causal relationship. Although the Office advised appellant by December 6, 2007 letter of the need to submit test results and other findings from his attending physician, he did not submit such evidence. Moreover, Dr. Beasley's well-rationalized report negated causal relationship. Therefore, appellant failed to meet his burden of proof.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained a bilateral high frequency hearing loss in the performance of duty.

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<sup>6</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003) (medical reports not containing rationale on causal relationship are entitled to little probative value).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 8, 2008 is affirmed.

Issued: January 9, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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