United States Department of Labor
Employees' Compensation Appeals Board

F.F., Appellant	)	
and	)	**Docket No. 10-2083**
	)	**Issued: July 7, 2011**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA, 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
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 11, 2010 appellant filed a timely appeal from a July 22, 2010 decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act (FECA)[1] 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 met his burden of proof to establish that he sustained a hearing loss in the performance of duty causally related to factors of his federal employment.

On appeal, appellant contends that hearing loss was present as of 1992, he has not been exposed to noise since his retirement and his hearing loss is now severe.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On February 1, 2010 appellant, then a 72-year-old former toolmaker foreman, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss as a result of his federal employment. He retired on January 1, 1993.

In a December 16, 2009 statement, appellant indicated that in 2007 he had tubes placed in his ears because they began to drain.

Appellant submitted a series of employing establishment audiograms from June 26, 1980 to July 8, 1992. He also submitted an audiogram dated December 16, 2009 by Audiologist Amy Becken who reported the following decibel levels for the right ear at 500, 1,000, 2,000 and 3,000 hertz, respectively: 30, 30, 35 and 65. For the left ear, the results were 35, 30, 45 and 70 at the same levels.

In a December 21, 2009 medical report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, diagnosed mixed-type bilateral hearing loss. He reported that appellant had a tube in his left ear and a ratable hearing loss of 22.5 percent in the right ear, 30 percent in the left ear and a 23.75 percent binaural hearing loss based on his December 16, 2009 audiogram. Dr. Randolph opined that appellant's hearing loss was due to a combination of factors, including past noise exposure, the aging process and his diabetes mellitus and attributed the "majority" of his hearing loss to past noise exposure. He stated that he did not review appellant's industrial audiograms and that reviewing them would have allowed him to make a better determination as to the degree of hearing loss caused by industrial noise exposure.

A May 6, 2010 statement of accepted facts listed that appellant was exposed to loud noise at the employing establishment generated by lathes, milling machines, grinders, drill presses, overhead cranes, ventilation/heat fans, deck crawlers, needle guns and chain falls for eight hours a day as a toolmaker apprentice and journeyman foreman between 1957 and 1989 and by lathes, drill presses, grinders, sanders, over head cranes and ventilation for four hours a day as a general foreman toolmaker between 1989 and 1993. Appellant used hearing protection devices.

On May 6, 2010 OWCP requested a supplemental opinion from Dr. Randolph, providing him with the statement of accepted facts and copies of appellant's industrial audiograms.

In a May 27, 2010 medical report, Dr. Randolph remarked that appellant's last industrial audiogram dated July 8, 1992 revealed essentially normal hearing in both ears ratable at zero percent. He reported that a December 16, 2009 audiogram revealed a significant bilateral hearing loss, which accounted for all of the accumulative causes, including past noise exposure, the conductive component to the hearing loss, the aging process and his diabetes mellitus. Dr. Randolph indicated that hearing loss due to noise exposure occurs at the time of exposure and does not get worse at a later date because of past noise exposure. On the basis of the industrial audiograms, he concluded that appellant had hearing loss due to factors not related to noise exposure, such as age and diabetes mellitus.

By decision dated July 22, 2010, OWCP denied appellant's claim, finding that the medical evidence was insufficient to demonstrate a causal relationship between his hearing loss condition and employment-related noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[5] To establish fact of injury in an occupational disease claim, 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.[6]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.[7] 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.[8] However, it is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *See S.P.*, 59 ECAB 184, 188 (2007).

[6] *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *R.R.*, Docket No. 08-2010 (issued April 3, 2009).

[7] *See I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 4 at 352.

[8] *See Woodhams*, *supra* note 4.

of establishing entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.[9]

ANALYSIS

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

The evidence supports that appellant sustained hearing loss and was routinely exposed to loud noise at the workplace generated by industrial equipment and machinery from 1957 until his retirement on January 1, 1993. The medical evidence of record provides support that a portion of appellant's hearing loss is employment related.

Dr. Randolph's December 21, 2009 report attributed the majority of appellant's mixed-type bilateral hearing loss to occupational noise exposure based on his history and the December 16, 2009 audiogram. He advised that he did not review appellant's prior audiometric records or otherwise provide reasoning for his opinion.[10] Subsequently, on May 6, 2010 OWCP requested a supplemental medical report from Dr. Randolph and provided him with appellant's industrial audiograms and a statement of accepted facts for review. In his May 27, 2010 report, Dr. Randolph commented that appellant's hearing was normal on or around July 8, 1992, the date of his last industrial audiogram and depreciated considerably afterward. While he concluded that appellant's hearing loss after his retirement was not caused by federal occupational noise exposure, Dr. Randolph nonetheless opined that appellant sustained some hearing loss from work-related noise exposure. OWCP did not request that Dr. Randolph clarify this apparent inconsistency.

Dr. Randolph's opinion did not address the inconsistency in his May 27, 2010 report in which he found that appellant had some work-related hearing loss but where he also concluded that his hearing loss was not due to occupational noise damage.[11] The Board has held, however, that it is not necessary to prove a significant contribution of employment factors to a condition for the purpose of establishing causal relationship.[12] In light of this, OWCP should have requested further clarification from Dr. Randolph or referred appellant for a second opinion. Proceedings under FECA are not adversarial in nature nor is OWCP a disinterested arbiter. While appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done and must do so in a fair manner.[13] OWCP did not further develop the medical evidence. Once it undertakes

[9] *See Phillip L. Barnes*, 55 ECAB 426 (2004); *see also Virginia Richard*, 53 ECAB 430 (2002); *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

[10] *See M.W.*, 57 ECAB 710 (2006) (medical conclusions based on an inaccurate or incomplete factual history are of diminished probative value); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (medical opinion not fortified by medical rationale is of little probative value).

[11] *See F.M.*, Docket No. 10-1438 (issued February 14, 2011).

[12] *See Kathleen M. Fava*, 49 ECAB 519 (1998); *Beth P. Chaput*, 37 ECAB 158 (1985).

[13] *See Melvin James*, 55 ECAB 406 (2004).

development of the record, it has the responsibility to do so in a proper manner.[14] As OWCP did not fully develop the evidence in this case, the Board will remand it for further development of the medical evidence. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision as to whether appellant sustained an occupational hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: July 7, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

[14] *See Henry G. Flores, Jr.*, 43 ECAB 901 (1992); *see also Charles J. Jenkins*, 40 ECAB 362 (1988).