

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

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G.J., Appellant )  
and ) Docket No. 10-1508  
DEPARTMENT OF THE NAVY, PUGET )  
SOUND NAVAL SHIPYARD, Bremerton, WA, ) Issued: May 2, 2011  
Employer )  
\_\_\_\_\_  
)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 12, 2010 appellant filed a timely appeal from an April 30, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim for an increased hearing loss. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> 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 his increased binaural (both ears) hearing loss was causally related to work exposure commencing February 6, 1996.

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

## **FACTUAL HISTORY**

On December 30, 2008 appellant, then a 56-year-old pipe fitter supervisor, filed an occupational disease claim alleging that on March 1, 1995 he first realized that his hearing loss was employment related.<sup>2</sup> He related that his baseline hearing deteriorated as a result of his employment noise exposure and that he waited until retirement to file his claim.<sup>3</sup>

On January 5, 2009 Dr. Richard W. Seaman, a second opinion Board-certified otolaryngologist, diagnosed bilateral noise-induced hearing loss and bilateral tinnitus, which the physician stated appeared to be related to appellant's federal employment. An audiogram showed a zero percent ratable bilateral hearing loss.

In a letter dated June 11, 2009, the Office requested a supplemental report from Dr. Seaman regarding appellant's hearing loss. It informed him that appellant had previously filed a hearing loss claim which had been denied on February 6, 1996. Dr. Seaman was instructed to only consider whether appellant's noise exposure for the period 1997 to 2007 caused or aggravated his hearing loss.

In a June 30, 2009 report, Dr. Seaman opined that appellant's hearing loss was currently compensable under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. However, he concluded that the progression of appellant's hearing loss was not employment related as the noise exposure for the period 1988 to 2007 was insufficient to cause any damage. Appellant had worked as a manager and his "time-waited average" was not greater than 84 decibels (dB) for at least 30 days per year. Dr. Seaman opined that, on a more probable than not basis, appellant's hearing loss was unrelated to industrial noise exposure.

By decision dated July 13, 2009, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the increased hearing loss was causally related to his federal employment.

On July 24, 2009 appellant requested a review of the written record by an Office hearing representative.

By decision dated November 13, 2009, the Office hearing representative vacated the denial of appellant's claim and remanded the case for further development.

The Office requested a supplemental report from Dr. Seaman based on an updated statement of accepted facts. It noted that under claim number xxxxxx659 it accepted a binaural hearing loss for work exposure occurring prior to February 6, 1996. However, appellant had no

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<sup>2</sup> Appellant retired effective March 2, 2007.

<sup>3</sup> On February 2, 1996 the Office denied appellant's hearing loss claim on the basis that there was no compensable hearing loss. The date of injury was listed as March 1, 1993 and the claim number was xxxxxx111. The Office noted appellant's claim was accepted for binaural hearing loss under claim number xxxxxx659, but with no compensable hearing loss. The date of injury for this claim was also noted as March 1, 1993. The Office combined these claims under Master Claim No. xxxxxx673, which represents the record on the current appeal.

ratable loss as a result of his accepted binaural hearing loss. The Office requested that Dr. Seaman consider whether appellant's work exposure on and after February 6, 1996 caused an increase in his hearing loss. It provided him with an updated statement of accepted facts to include all positions appellant held after February 1996, as well as noise data.

In an April 27, 2010 addendum, Dr. Seaman reiterated his opinion that appellant's increased hearing loss was not employment related. He stated that appellant sustained no additional damage as a result of his occupational noise exposure on and after February 2, 1996. Dr. Seaman attributed the additional hearing loss to either another medical etiology or the early onset of presbycusis, as the hearing loss occurred in all frequencies.

By decision dated April 30, 2010, the Office denied appellant's claim that his hearing loss on and after February 6, 1996 was due to his federal employment.

### **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.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>5</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between an employee's diagnosed conditions and the implicated employment factors.<sup>6</sup> 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 conditions and the specific employment factors identified by the employee.<sup>7</sup>

An award of compensation may not be based on surmise, conjecture or speculation.<sup>8</sup> Neither the fact that an employee' claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>9</sup>

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<sup>4</sup> See *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Ruby I. Fish*, 46 ECAB 276 (1994); A.C., Docket No. 08-1453 (issued November 18, 2008).

<sup>5</sup> *David Apgar*, 57 ECAB 137 (2005); T.P., Docket No. 09-2102 (issued August 25, 2010).

<sup>6</sup> *G.G.*, 58 ECAB 389 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>7</sup> *J.M.*, 58 ECAB 303 (2007); *Roy L. Humphrey*, *supra* note 4; *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *Paul E. Thams*, 56 ECAB 503 (2005); D.U., Docket No. 10-144 (issued July 27, 2010).

<sup>9</sup> *D.I.*, 59 ECAB 158 (2007); *Kathryn E. Demarsh*, *supra* note 6.

## **ANALYSIS**

Appellant alleged that he sustained increased binaural hearing loss due to exposure to hazardous noise at his federal job beginning March 1, 1995. He retired from the employing establishment on March 2, 2007 and filed the instant claim on December 30, 2008. The record contains evidence that the Office accepted binaural hearing loss with an injury date of March 1, 1993, but found no compensable hearing loss. The issue on appeal is whether appellant has established that his increased hearing loss was caused or aggravated by his federal noise exposure on and after February 6, 1996.

Dr. Seaman, a second opinion Board-certified otolaryngologist, reviewed the factual background of appellant's condition provided in the statement of accepted facts, examined appellant and provided the results of audiometric testing and an otologic examination. He found that while appellant had employment-related hearing loss pursuant to the A.M.A., *Guides*, the increase in the hearing loss was not due to his employment exposure on and after February 6, 1996. Dr. Seaman explained that appellant worked as a manager during the period in question and that his "time-waited average" was not greater than 84 dB for at least 30 days per year and thus he had no additional damage as a result of noise exposure on and after February 2, 1996. In a supplemental opinion, he attributed appellant's increased hearing loss to either another medication etiology or early onset presbycusis as the hearing loss occurred in all frequencies.

The Board finds that the well-reasoned medical evidence from Dr. Seaman establishes that appellant's increased hearing loss was not caused or aggravated by his federal employment on and after February 6, 1996. Dr. Seaman fully explained the reasons for his opinion explaining why appellant's increased hearing loss was not caused by work noise exposure on and after February 6, 1996. Appellant has not submitted any medical opinion evidence supporting that the increase in his bilateral hearing loss was caused due to workplace noise exposure on and after February 6, 1996. Accordingly, the Board finds that the Office's April 30, 2010 decision properly denied the claim.

## **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his increased binaural hearing loss was causally related to noise exposure in his federal employment on and after February 6, 1996.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 30, 2010 is affirmed.

Issued: May 2, 2011  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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