

during the course of his federal employment. He did not stop work. Appellant submitted audiograms from 1972 to 2007.

OWCP prepared a statement of accepted facts describing appellant's history of noise exposure at work commencing 1972. It referred him to Dr. Sean B. Peppard, a Board-certified otolaryngologist, for a second opinion examination.

On October 10, 2007 an audiologist found that the results of the most recent audiogram were "inconsistent and suggestive of malingering." She recommended an auditory brainstem response (ABR) test. On October 31, 2007 the audiologist noted that the ABR showed "some hearing loss in the higher frequencies" but not a severe hearing loss.

In a report dated November 6, 2007, Dr. Peppard opined that the ABR test was normal for absolute and interwave latencies. He diagnosed normal hearing on the right and "[i]nconsistent and unreliable test results from the left ear, with nonorganic hearing decrease on that side." Dr. Peppard found that the hearing loss was not employment related and that he was not able to determine "what if any level of loss there may be." He reviewed prior audiograms which he found were impossible to evaluate and noted that appellant had a total hearing loss in the left from 1982 to 1985. Dr. Peppard asserted that audiograms revealed a positive Stenger tests at 1,000, 2,000 and 4,000 hertz which "demonstrates unreliability." He reiterated that the ARB and audiogram were inconsistent as the ABR revealed normal hearing and the audiogram was unreliable. Dr. Peppard recommended a magnetic resonance imaging (MRI) scan study of the brain to rule out a tumor. In an accompanying form report, he checked that appellant's hearing was not due to his employment and provided as a rationale that he had prior inconsistent audiometric evaluations. In an addendum dated December 14, 2007, Dr. Peppard related that the MRI scan study did not reveal a nerve tumor and that the "internal auditory canal and cerebellopontine angle [were] normal."

By decision dated December 26, 2007, OWCP denied appellant's claim finding that he did not establish that he sustained hearing loss due to factors of his federal employment. On January 7, 2008 appellant requested a review of the written record. He submitted a December 14, 2007 audiogram.

In a decision dated May 27, 2008, a hearing representative affirmed the December 26, 2007 decision. He found that Dr. Peppard's opinion represented the weight of the evidence and supported that appellant did not have a hearing loss due to work factors.

On August 25, 2008 Jeffrey L. Wisneski, an audiologist, related that appellant was "exposed to hazardous noise while employed by [the employing establishment] but that he concurred with the "previous documentation in the case."²

On May 27, 2009 appellant, through his attorney, requested reconsideration. Appellant's representative argued that the audiologist and Dr. Peppard disagreed about whether appellant had

² On September 2, 2008 appellant appealed to the Board. On May 6, 2009 the Board dismissed his appeal at his request. Order Dismissing Appeal, Docket No. 08-2376 (issued May 6, 2009).

hearing loss. Counsel noted that appellant had a history of preexisting hearing loss due to nerve damage that had not been addressed.

By decision dated August 31, 2009, OWCP denied modification of its May 28, 2008 decision.

In a report dated April 29, 2009, received by OWCP on September 1, 2001, Dr. Matthew L. Jerles, a Board-certified otolaryngologist, diagnosed unspecified sensorineural hearing loss. He noted that a hearing test performed on that date yielded “inconsistent responses” and that a 2005 audiogram was “essentially normal.” Dr. Jerles recommended an ABR test.

On June 2, 2009 Dr. Jerles related that the ABR “shows inconsistent responses due to high artifact levels.” He indicated that he was unable to find significant hearing loss in either ear from the information provided.

On August 26, 2010 appellant, through counsel, again requested reconsideration. He argued that Dr. Peppard and OWCP did not establish that appellant’s hearing loss was unrelated to employment. Counsel argued that OWCP should have considered the issue of whether he had nerve damage aggravated by employment.³ He contended that a conflict existed between Dr. Peppard and Dr. Jerles.

By decision dated October 15, 2010, OWCP denied modification of its December 26, 2007 decision. It found that Dr. Jerles had not addressed whether appellant had an employment-related loss of hearing.

On appeal appellant contends that three of his coworkers have similar hearing problems for which they received compensation from OWCP.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 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.⁵ 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.⁶

³ In a letter dated February 27, 1976, the employing establishment noted that appellant’s physician diagnosed “a nerve-type deafness” and found that he should not work in a high noise area. It advised that he would undergo a fitness-for-duty examination to determine if he could perform his work duties.

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Ellen L. Noble*, 55 ECAB 530 (2004).

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;⁷ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁸ and (3) medical evidence establishing 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.⁹

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 diagnosed condition and the implicated employment factors.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant,¹¹ must be one of reasonable medical certainty¹² explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

ANALYSIS

Appellant alleged that he sustained bilateral hearing loss due to exposure to hazardous noise at work. Although the evidence establishes that he had workplace noise exposure, the medical evidence does not support that he has a loss of hearing due to his federal employment.

OWCP referred appellant to Dr. Peppard for a second opinion examination. On November 6, 2007 Dr. Peppard found that he had normal hearing on the right side and unreliable test results for the left side with a nonorganic hearing decrease. He advised that any hearing loss was not employment related and noted that he could not determine whether there was any loss of hearing due to inconsistencies in testing. Dr. Peppard found that an ABR test yielded normal results. He reviewed prior audiograms which he found showed inconsistent results and a positive Stenger tests which verified unreliability. Dr. Peppard recommended an MRI scan of the brain in view of the normal ABR results and inconsistent results on audiogram. In a December 14, 2007 addendum, Dr. Peppard noted that an MRI scan study did not show a tumor and that auditory canals were normal. His opinion that appellant does not have an employment-

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *Judy C. Rogers*, 54 ECAB 693 (2003).

related loss of hearing is thorough and well rationalized and thus represents the weight of the evidence.

Further, there is no other medical evidence supporting that appellant sustained hearing loss due to noise exposure at work. He submitted a December 14, 2007 audiogram from an audiologist. The audiologist is not a physician under FECA and therefore his or her opinion is of no probative value.¹⁴

On April 29, 2009 Dr. Jerles diagnosed unspecified sensorineural hearing loss. He interpreted a hearing test obtained on that date as showing inconsistencies and noted that a 2005 audiogram was normal. Dr. Jerles referred appellant for an ABR test. On June 2, 2009 he found that the ABR test showed inconsistencies due to high levels of artifacts. Dr. Jerles related that he was unable to establish significant hearing loss on either the right or left side. Consequently, his opinion is insufficient to meet appellant's burden of proof as he did not find hearing loss due to work factors.

On appeal appellant argues that his coworkers had similar symptoms of hearing loss and received benefits for their loss of hearing from OWCP. Although he was exposed to noise, however, the medical evidence does not establish that he has any hearing loss or that it is related to employment. As appellant has not submitted any medical evidence supporting that he sustained hearing loss due to factors of his federal employment, he has not established his claim.¹⁵

Appellant may submit new 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 hearing loss causally related to factors of his federal employment.

¹⁴ 5 U.S.C. § 8101(2); *Herman L. Henson*, 40 ECAB 341 (1988).

¹⁵ See *Mary E. Marshall*, 56 ECAB 420 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 2, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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