

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

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F.A., Appellant )

and )

DEPARTMENT OF HEALTH & HUMAN )  
SERVICES, DEFENSE CONTRACT )  
MANAGEMENT AGENCY, PORT KELLY, )  
San Antonio, TX, Employer )

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**Docket No. 11-662**  
**Issued: September 21, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 19, 2011 appellant filed a timely appeal from the December 2, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his hearing loss claim. Pursuant to the Federal Employees' Compensation Act (FECA)<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's hearing loss is causally related to his federal civilian employment.

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

## **FACTUAL HISTORY**

On July 12, 2010 appellant, a 58-year-old quality assurance representative, filed a claim for workers' compensation benefits alleging that his hearing loss was a result of noise exposure in the course of his federal civilian employment.<sup>2</sup>

OWCP referred appellant, together with his case record and a statement of accepted facts, to Dr. William C. Smith, a Board-certified otolaryngologist, for an otologic examination and audiometric evaluation. Dr. Smith found that appellant had a very mild hearing loss without much change from hearing tests in 1991. He concluded: "There is not a sensorineural loss that is in excess of that [which] would be normally predicated on the basis of presbycusis."<sup>3</sup> Dr. Smith stated that although appellant was exposed to noise sufficient to have caused sensorineural hearing loss, he did not have a noise-induced hearing loss. He diagnosed normal hearing bilaterally for appellant's age: "There is not a significant sensorineural hearing loss present."

In a decision dated December 2, 2010, OWCP denied appellant's claim for workers' compensation benefits. It found that, although the evidence supported that appellant's noise exposure occurred as alleged, the medical evidence failed to establish that the exposure caused a hearing loss.

On appeal, appellant points out that he does not hear properly during normal conversation and has to be reminded that he is speaking too loudly. He adds that he has sleeping problems, headaches and ringing in his ears.

## **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.<sup>5</sup>

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<sup>2</sup> Appellant was exposed to noise from aircraft engines, power support equipment/tools, hydraulic test stands, auxiliary power units, high pressure air compressors, air conditioning systems, machine shop lathes, welding equipment, grinders, air hammers, impact guns sandblasters and steam cleaning equipment. Hearing protection, such as plugs and muffs, was provided.

<sup>3</sup> Presbycusis is a progressive, bilateral, symmetric hearing loss occurring with age. Hearing thresholds obtained for Dr. Smith at 500, 1,000, 2,000 and 3,000 hertz (Hz) were 10, 25, 25 and 25 decibels, respectively, on the right, and 10, 25, 20 and 25 on the left.

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

Causal relationship is a medical issue,<sup>6</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>7</sup> must be one of reasonable medical certainty,<sup>8</sup> and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>9</sup>

### ANALYSIS

OWCP accepts that appellant was exposed to noise in the workplace. The issue is whether this exposure caused his hearing loss. Causation is a medical issue, and the medical opinion evidence establishes that appellant's hearing loss is not noise induced, but is on the basis of age. Dr. Smith, OWCP's referral physician, is a Board-certified otolaryngologist. It was his opinion that appellant's hearing was normal for his age. Dr. Smith saw no significant sensorineural hearing loss. Appellant's measured hearing loss was not much changed from 1991 and did not demonstrate a hearing loss that was due to hazardous levels of noise.

OWCP denied appellant's claim because of the nature of his hearing loss. The recorded hearing thresholds obtained for Dr. Smith were indicative of the symmetric hearing loss typical of presbycusis, and not the high-frequency hearing loss caused by exposure to hazardous levels of noise. That is not to say appellant has no hearing loss. It is not the kind of hearing loss that one associates with occupational noise exposure. There is no medical basis for attributing appellant's hearing loss to his federal civilian employment.

The medical opinion evidence fails to establish that exposure to noise in the workplace caused his hearing loss. The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty. The Board will therefore affirm the OWCP's December 2, 2010 decision denying his claim for workers' compensation benefits.

Appellant argues on appeal that he does not hear properly during normal conversation. That may well be, but it is not established that this is a result of his exposure to noise at work.<sup>10</sup> Appellant also argues that he has sleeping problems, headaches and ringing in his ears. If tinnitus (ringing in the ears) interferes with activities of daily living, up to five percent may be

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<sup>6</sup> *Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>7</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>8</sup> *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>9</sup> *See William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>10</sup> The hearing thresholds obtained for Dr. Smith showed no ratable hearing loss or compensable impairment in the ability to hear everyday sounds under everyday listening conditions. American Medical Association, *Guides to the Evaluation of Permanent Impairment* 250 (6<sup>th</sup> ed. 2009).

added to any measurable binaural hearing impairment,<sup>11</sup> but there must first be a measurable binaural hearing impairment causally related to federal civilian employment. Neither is established. The cause of his hearing loss is determined by the weight of the medical opinion evidence. The medical expert, Dr. Smith, explained why appellant's demonstrated hearing loss was not the kind caused by noise. The clear weight of the medical evidence does not support the causal relationship between his hearing loss and his federal civilian employment.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that his hearing loss is causally related to his federal civilian employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 2, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2011  
Washington, DC

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

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

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

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<sup>11</sup> *Id.* at 249.