



opinion physician. He was exposed to a high level of industrial noise and that no other outside factors would explain his hearing loss.

### **FACTUAL HISTORY**

On September 7, 2011 appellant, then a 70-year-old former electronics engineer, filed an occupational disease claim alleging that, as a result of exposure to loud noise in his federal employment, he sustained hearing loss. The employing establishment controverted the claim, noting that appellant's exposure to noise ceased on October 21, 1990 when he was promoted from electronics mechanic to electronics engineer.

Appellant submitted a summary of occupational noise exposure. He was exposed to noise while in the military from February 1963 through September 1982. Appellant then began work for the Federal Government where he was exposed to noise first at Puget Sound Naval Shipyard from May 1983 to December 1985 and then at the employing establishment from December 1985 through January 1997 where he worked in shops and was exposed to various naval industry working environment conditions and noises. He was last exposed to hazardous noise on January 1, 1990, when he first noticed his hearing loss.

In a September 9, 2010 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, diagnosed bilateral sensorineural hearing loss. He noted that appellant's hearing loss was largely caused by factors other than industrial noise exposure; stating that the hearing loss in the lower frequencies, on a more likely than not basis, would not be due to past industrial causes. Dr. Randolph requested industrial audiograms from appellant's federal employment to determine if some of the hearing loss may have been caused by noise exposure. He concluded that appellant had a ratable hearing loss of 43.125 percent in the right ear and 41.25 percent in the left ear, with a binaural hearing loss ratable at 41.56 percent. Dr. Randolph noted no additional rating for tinnitus.

By letter dated June 14, 2011, OWCP sent Dr. Randolph copies of audiograms obtained in 1983 and 1987 and asked for further comment. In a June 20, 2011 report, Dr. Randolph noted that he was not provided any audiograms after 1987. The audiogram performed in his office on September 7, 2010 revealed very significant bilateral sensorineural hearing loss largely due to causes other than industrial noise exposure. Due to the lack of audiometrics performed at or near the time appellant left his civil service employment, it was unknown if he had a significant hearing loss at that time. Dr. Randolph stated that the current hearing loss was in excess of that which would normally be predicted on the basis of presbycusis, but that the configuration of the audiogram suggested significant hearing loss due to presbycusis. He did note that the workplace exposure was of sufficient intensity and duration to have caused and/or aggravated appellant's hearing loss, especially if inadequate ear protection had been utilized. Dr. Randolph noted that it was unknown what other aggravating factors may have been present since appellant left his federal employment in 1997.

By decision dated July 21, 2011, OWCP denied appellant's claim. It found that, although appellant filed a timely claim, the medical evidence did not support causal relation.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<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 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.<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;<sup>5</sup> a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;<sup>6</sup> 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.<sup>7</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence, which include 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.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>9</sup> and must be one of reasonable certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>5</sup> *Michael R. Shaffer* 55 ECAB 386 (2004).

<sup>6</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>7</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>8</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

## ANALYSIS

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

The only medical evidence of record submitted by appellant are reports by Dr. Randolph, who found that appellant had a hearing loss due to presbycusis. Although Dr. Randolph noted that appellant's work history was of sufficient duration and intensity to have caused and/or aggravated the hearing loss, the configuration of the audiogram suggested hearing loss due to presbycusis. He described appellant's hearing loss at the lower frequencies, and that a hearing loss at such frequencies, on a more likely than not basis, was not due to past industrial causes. Furthermore, appellant's last exposure to noise was on January 1, 1990. Dr. Randolph noted it was not known what other aggravating factors could have been present since appellant left his federal employment in 1997. Consequently, his opinion is not sufficient to support appellant's claim. Dr. Randolph did not support that appellant's hearing loss was due to noise exposure in his federal employment.

On appeal, appellant contends that the denial of his claim was arbitrary as the report of Dr. Randolph was ambivalent. He has the burden of proof; however, to establish causal relationship. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his hearing loss was causally related to noise exposure in his federal employment.<sup>12</sup> As he has not submitted any medical evidence definitively establishing that his hearing loss is due to factors of his employment, he has not established his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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.

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<sup>12</sup> *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated July 21, 2011 is affirmed.

Issued: April 10, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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