

hearing loss and its relation to his employment on April 5, 2011. Appellant stopped working at the employing establishment in 1996.

Appellant submitted employing establishment medical records with audiograms taken from the hearing conservation program dated December 30, 1970 to January 23, 1991, which revealed progressive hearing loss at all frequencies. An April 5, 2011 audiogram revealed mild hearing loss. Appellant submitted a job application dated April 6, 1978 and a job history summary from September 8, 1987 to September 21, 1995.

By letters dated May 26 and September 28, 2011, OWCP advised appellant of the type of evidence needed to establish his claim. It also requested the employing establishment to address appellant's workplace noise exposure.

On September 7, 2011 OWCP referred appellant's medical record to the medical adviser for a determination of whether there was evidence of hearing loss. In a September 8, 2011 report, an OWCP medical adviser reviewed the audiograms dated December 30, 1970 to April 5, 2011 and opined that there was a significant loss of hearing in both ears at all frequencies through 4,000 Hertz (Hz) except the right ear at 500 Hz there was no change.

Appellant submitted an employment history summary. He noted he was last exposed to hazardous noise on April 5, 2011. Appellant first noticed his hearing loss on April 5, 2011 and realized it was causally related to his employment on the same date. He had no hobbies which involved exposure to loud noise.

In a statement of accepted facts, OWCP noted that appellant was in the Army from September 1973 to September 1975. From 1977 to 1996, appellant worked at the employing establishment, mostly as a nuclear plant laborer with short periods of time that he was out of work. He performed duties of a tractor and machine operator and was exposed to hazardous noise of machinery and chainsaws with 90 percent of his work spent around hazardous noise. From May 20 to October 10, 1996 and from May to October 1997, appellant was employed at the Department of the Interior as a tractor operator. He performed duties of a tractor and machine operator and was exposed to hazardous noise of machinery and chainsaws with 90 percent of his work spent around hazardous noise.

By letter dated October 25, 2011, OWCP referred appellant to Dr. Jack W. Aland, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. Dr. Aland performed an otologic evaluation of appellant on November 14, 2011 and audiometric testing was conducted on the doctor's behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed the following: right ear -- 20, 15, 30 and 30 decibels; left ear -- 25, 20, 35 and 35 decibels. In a report dated November 14, 2011, Dr. Aland diagnosed symmetric mild bilateral neurosensory hearing loss with no noise notch and 92 percent discrimination in both ears. He noted normal ear canals, tympanic membranes and speech reception. Dr. Aland advised that the audiometric test results were valid and representative of appellant's hearing sensitivity. He noted comparing historical audiograms with the first audiogram from 1970 showing normal hearing and the last audiogram during the period of employment with the employing establishment in 1991 showing normal hearing in the left ear and a loss of 30 decibels of hearing at 6,000 Hz with all other frequencies normal. Dr. Aland

opined that appellant worked around noise from 1977 to 1987 with no hearing loss in either ear and, after a four-year period, a repeat audiogram revealed normal hearing in the left ear and a drop of 30 decibels in the right ear at 6,000 Hz. He opined that most likely the hearing loss was not due to his noise exposure while working for the employing establishment. Dr. Aland noted some continued drop in both ears since then over a 10-year period; however, he noted it was unclear how much noise exposure he had after he stopped work for the employing establishment. He noted that appellant may benefit from bilateral hearing aids.

In a December 5, 2011 decision, OWCP denied the claim finding that the medical evidence did not support that the hearing loss was causally related to workplace noise exposure. As appellant did not have an employment-related hearing loss, he had no entitlement to a schedule award.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that the injury was sustained 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. 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.²

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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. The medical evidence required to establish causal relationship is generally 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. 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.³

² Gary J. Watling, 52 ECAB 357 (2001).

³ Solomon Polen, 51 ECAB 341 (2000).

ANALYSIS

In the instant case, it is not disputed that appellant was exposed to noise from 1977 to 1996 in the course of his employment. OWCP denied appellant's claim on the grounds that the medical evidence was insufficient to support that he has hearing loss causally related to his workplace noise exposure. It noted that appellant did not submit any medical report from a physician addressing how workplace noise exposure may have caused or aggravated his hearing loss. OWCP noted that appellant's last date of exposure was in 1996.

Appellant submitted various employing establishment audiograms signed by an audiologist from December 30, 1970 to January 23, 1991, which revealed progressive hearing loss at all frequencies. On October 25, 2011 OWCP referred appellant to Dr. Aland. In a November 14, 2011 report, he determined that appellant's sensorineural hearing loss was not due to appellant's employment. Dr. Aland diagnosed symmetric mild bilateral neurosensory hearing loss and noted reviewing audiograms from 1970 to 1991. However, as noted above, appellant's last noted exposure to hazardous noise was in 1996. The Board notes that for the five-year period from 1991 to 1996 there is no clear record of audiograms being performed on behalf of the employing establishment or as part of an employing establishment hearing conservation program. As appellant worked at the employing establishment from 1991 to 1996, it would be likely that audiograms exist for this period but it is unclear from the record that the employing establishment provided all records pertaining to appellant and any records generated as part of any hearing conservation program. The Board notes that these records would not be readily accessible to appellant.

Proceedings under FECA are not adversary in nature nor is OWCP a disinterested arbiter. The Board has stated that, while it is the burden of an employee to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁴ The Board has the obligation to see that justice is done.⁵

Therefore, the Board finds that the case must be remanded to OWCP to obtain from the employing establishment any audiograms taken during appellant's period of employment, including the period of 1991 to 1996, and obtain information regarding any employing establishment hearing conservation program. Following this, and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

⁴ See *Russel Martin Dawson*, 32 ECAB 1998 (1981); *Willie James Clark*, 39 ECAB 1311 (1988).

⁵ *John W. Butler*, 39 ECAB 852 (1988).

ORDER

IT IS HEREBY ORDERED THAT the December 5, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development in accordance with this decision of the Board.

Issued: August 23, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board