

became aware of his hearing loss on March 16, 2007 and realized it was causally related to his employment on November 12, 2009. Appellant retired on February 28, 2009.

By letter dated December 10, 2009, OWCP advised appellant of the type of evidence needed to establish his claim. It also requested that the employing establishment address the sources of his noise exposure, decibel and frequency level, period of exposure and hearing protection provided.

Appellant submitted a statement and noted that from 1985 to February 2009 he worked as a sheet metal worker and progressed to a sheet metal mechanic leader. He noted being exposed to noise from grinders, air and electric sanders, hand and air operated chisels, cut off saws, circular saws, reciprocating saws and band and panel saws. Appellant noted working with punch presses, air and electric drills, routers, riveters, nibblers, impact hammers, air cut off tools, chippers, scalers and other tools required to perform sheet metal fabrication and sheet metal structural repair. He noted being exposed to noise nine hours a day for 24 years. Appellant wore earplugs for his hearing protection while driving forklifts and other motorized equipment.

Appellant was treated by Dr. John Bosi, an osteopath and family practitioner, on September 16, 2009, for gradual hearing loss. He reported a history of loud noise exposure at work where he was a sheet metal worker and was exposed to noise for 24 years. Dr. Bosi noted examination of the head, ears, nose and throat. He diagnosed sensorineural hearing loss secondary to occupational noise exposure. Dr. Bosi noted that an audiogram revealed hearing loss consistent with occupational noise exposure. In a patient hearing history, appellant noted working 24 years as a sheet metal mechanic and was exposed to sheet metal machine noise and had tinnitus in the left ear. Also submitted was a September 16, 2009 audiogram.²

The employing establishment submitted a statement from John P. Stanley, who concurred with appellant's stated work exposure. Mr. Stanley noted that appellant participated in the hearing conservation program and received hearing conservation training, annual audiograms and was issued appropriate hearing protection.

By letter dated March 24, 2010, OWCP referred appellant to Dr. Emil Liebman, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. It provided Dr. Liebman with a statement of accepted facts, available exposure information, and copies of all medical reports and audiograms.

Dr. Liebman performed an otologic evaluation of appellant on March 31, 2010 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 cycles per second revealed the following: right ear 20, 20, 10 and 20 decibels; left ear 20, 10, 20 and 20 decibels. In a report dated April 6, 2010, Dr. Liebman noted that appellant noted a decrease in hearing and tinnitus that he had noticed for several years. He noted appellant's noise exposure history and advised that physical examination of the canals and eardrums revealed normal tympanic membranes bilaterally. Dr. Liebman noted left facial asymmetry secondary to an episode of Bell's palsy. He diagnosed bilateral high-frequency sensorineural hearing loss. Dr. Liebman opined that based on a

² Most of the audiometric test results are illegible.

reasonable degree of medical certainty appellant's hearing loss was secondary to presbycusis and not related to his work exposure. He explained that the degree of hearing loss was compatible with presbycusis at age 60 or 61. Dr. Liebman also noted that appellant's hearing loss was not ratable for schedule award purposes.

By a decision dated April 20, 2010, OWCP denied appellant's claim on the grounds that the medical evidence did not support that his hearing loss was causally related to workplace noise exposure.

On May 13, 2010 appellant requested a review of the written record. He submitted a September 16, 2009 audiogram and a patient hearing history, all previously of record. Also submitted were audiometric records from February 2009 and February 2010. In a May 13, 2010 report, Dr. Bosi noted seeing appellant on May 7, 2010 for hearing loss and tinnitus. He noted reviewing the September 16, 2009 audiogram which revealed sensorineural hearing loss. Dr. Bosi noted that, based upon history, physical examination findings and the audiogram, appellant's hearing loss was secondary to his occupational noise exposure. He noted that constant exposure to noise has been shown to cause high-frequency sensorineural hearing loss which was documented in medical literature. Dr. Bosi further noted that despite protective equipment guidelines an employee who works in a loud environment and is exposed to noise greater than 120 decibels on a daily basis can have lasting hearing loss. He noted that the chronic exposure to loud noise-induced hearing loss from direct mechanical damage of cochlear structures and metabolic overload due to over stimulation. Dr. Bosi opined that this can also cause tinnitus. He opined that appellant had sensorineural hearing loss and tinnitus as a result of occupational noise exposure.

In a July 28, 2010 decision, the hearing representative affirmed the April 20, 2010 OWCP decision.

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.³

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) 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

³ Gary J. Watling, 52 ECAB 357 (2001).

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.⁴

ANALYSIS

On November 4, 2009 appellant filed a claim alleging that he developed hearing loss due to his federal employment. OWCP denied his claim finding that the report of Dr. Liebman, an OWCP referral physician and Board-certified otolaryngologist, was the weight of the evidence and established that appellant's hearing loss was not related to his federal employment.

The Board finds that there is a conflict in medical opinion between Dr. Liebman and Dr. Bosi, appellant's treating physician, both of whom are Board-certified specialists in their respective fields.

In his report dated April 6, 2010, Dr. Liebman diagnosed bilateral high-frequency sensorineural hearing loss and noted that it was more probable than not that appellant did not have any hearing loss as a result of working at the employing establishment as a sheet metal mechanic. He opined that the degree of hearing loss was compatible with presbycusis at age 60 to 61. By contrast, in reports dated September 16, 2009 and May 13, 2010, Dr. Bosi, appellant's treating physician, reviewed the September 16, 2009 audiogram which revealed sensorineural hearing loss and opined that appellant's condition was employment related. In his May 13, 2010 report, he explained that appellant's sensorineural hearing loss and tinnitus was secondary to his occupational noise exposure based upon appellant's history, examination findings and review of the audiogram. Dr. Bosi noted that constant exposure to noise has been shown to cause high-frequency sensorineural hearing and noted that despite protective equipment guidelines an employee who works in a loud environment and exposed to noise greater than 120 decibels on a daily basis can have lasting hearing loss and tinnitus. He noted that the chronic exposure to loud noise induces hearing loss from direct mechanical damage of cochlear structures and metabolic overload due to over stimulation. The Board finds that the reports of Drs. Liebman and Bosi are of virtually equal weight and that a conflict in medical opinion has been created.

Section 8123 of FECA provides that, if there is a disagreement between the physician making the examination for the United States and the employee's physician, OWCP shall appoint a third physician who shall make an examination.⁵

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ 5 U.S.C. § 8123(a); *see also Charles S. Hamilton*, 52 ECAB 110 (2000); *Leonard M. Burger*, 51 ECAB 369 (2000); *Shirley L. Steib*, 46 ECAB 39 (1994).

The case, therefore, requires remand for appellant's referral to an impartial medical specialist to resolve the conflict in the medical opinions. On remand, OWCP should refer appellant, the case record and a statement of accepted facts to an appropriate Board-certified physician to examine appellant and provide reasoned medical opinion to resolve the medical conflict pursuant to section 8123(a). Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2010 Office of Workers' Compensation Programs' decision is set aside and the case remanded to OWCP for further action consistent with this decision.

Issued: January 17, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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