



On appeal, appellant asserts that her hearing loss prevents her from working and that OWCP erred in not issuing decisions in 2004 and 2007 based on her refusal of suitable employment and thus deprived her of due process.<sup>2</sup>

### **FACTUAL HISTORY**

On January 8, 2002 appellant, then a 55-year-old maintenance worker, filed an occupational disease claim, alleging that noise exposure at work caused a hearing loss. On May 2, 2002, adjudicated under file number xxxxxx949, OWCP accepted that she sustained employment-related aggravation of degenerative disc disease of the lumbar spine. The instant hearing loss claim, adjudicated under file number xxxxxx664, was accepted and by decision dated June 27, 2002, appellant was granted a schedule award for a 58 percent binaural hearing loss.

The employing establishment indicated that appellant began light duty on September 12, 2001 and began working in the fiscal office of base housing on October 21, 2002. The duties there were described as answering the telephone, sorting mail, filing and maintaining timecards. On January 26, 2004 appellant declined a job offer for a full-time position of accounting technician. She retired on disability effective May 1, 2004. Appellant elected FECA benefits and was placed on the periodic compensation rolls, effective July 1, 2005, under the xxxxxx949 claim.

In June 2005, appellant was referred for vocational rehabilitation and had nonwork-related surgery of her left knee in July 2005. In January 2006, she began vocational training at the employing establishment, but no suitable position was identified.<sup>3</sup> On March 16, 2006 appellant underwent vocational testing and a transferable skills analysis was performed. A vocational rehabilitation plan was approved in August 2006 and she began training in computerized accounting at Mira Costa College on August 21, 2006. While attending college, appellant was accommodated with a note taker for lectures due to her hearing loss. In March 2007, the employing establishment offered her a permanent position as dispatcher that she declined, stating that she was attending school and had a hearing problem that would prevent her from performing the job duties.<sup>4</sup> In December 2007, appellant completed the college accounting program. The rehabilitation counselor, David F. Morgan, began placement services in January 2008 and he identified numerous employers who had available positions for an accounting clerk or bookkeeper. Appellant's vocational rehabilitation case was closed effective March 16, 2008. Mr. Morgan noted that appellant had the necessary skills to obtain employment as an accounting clerk or bookkeeper and her probability of success in obtaining employment in one of these occupations was excellent, if she were sufficiently motivated to do so.

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<sup>2</sup> Appellant also referred to OWCP file number xxxxxx949, accepted for aggravation of degenerative disc disease of the lumbar spine.

<sup>3</sup> During this period appellant continued to receive FECA wage-loss compensation.

<sup>4</sup> The position was described as sedentary and the duties were described as dispatching vehicles, issuing trip tickets, maintaining inputs into a computer system and for time and labor cards and providing other clerical support.

By decision dated July 15, 2008, under file number xxxxxx949, OWCP terminated appellant's medical and wage-loss benefits, effective August 3, 2008.<sup>5</sup> In a December 15, 2008 decision, an OWCP hearing representative affirmed the July 15, 2008 decision and in a merit decision dated November 4, 2009, OWCP denied modification of the prior decisions issued under file number xxxxxx949.

On March 29, 2010 appellant filed a claim for compensation for the period August 3, 2008 to March 26, 2010 under the instant hearing loss claim, adjudicated under file number xxxxxx664. She submitted an undated report from Sean M. Tubbs, an audiologist, who advised that she was seen on April 10, 2008 for a hearing aid check and audiological evaluation. Mr. Tubbs reported that appellant had a longstanding history of work-related bilateral severe sensorineural hearing loss and that her audiogram revealed no significant change in hearing thresholds but a significant decrease in speech understanding when compared to her previous test in August 2006. He recommended a cochlear implant evaluation and provided a January 4, 2010 audiology report.

By letter dated July 22, 2010, OWCP informed appellant of the type of evidence needed to support her claim for disability compensation. In a July 30, 2010 report, Dr. Robert D. Jacobs, Board-certified in otolaryngology, advised that she had been his patient since 2002 and that during that time she had developed progressive hearing loss in both ears. He indicated that appellant's most recent audiogram showed severe to profound sensorineural deafness bilaterally, secondary to noise exposure at work. Dr. Jacobs opined that, due to her severe difficulty with communication, she was considered totally disabled.

On September 15, 2010 OWCP informed appellant that her hearing loss case remained open for medical treatment. In a September 16, 2010 decision, it denied her claim for wage-loss compensation on the grounds that the evidence of record did not establish that her work stoppage from August 3, 2008 through March 26, 2010 was attributed to her hearing loss condition.

Appellant timely requested a hearing, which was changed, by her attorney, to a review of the written record. She submitted a May 28, 2002 report from Dr. David N. Schindler, an OWCP medical adviser who reviewed her claim for the June 27, 2002 schedule award. In an undated report, the audiologist, Mr. Tubbs advised that appellant had a severe to profound sensorineural bilateral hearing loss, left slightly worse than right. He stated that, even with the use of hearing aids, her hearing was not considered normal and that even aided communication would be very difficult in a work environment. Mr. Tubbs advised that appellant did not meet the requirements stated in her job description that "incumbent must have normal vision and hearing with or without corrective devices."

By decision dated February 24, 2011, an OWCP hearing representative affirmed the September 16, 2010 decision.

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<sup>5</sup> OWCP based the opinion on a May 20, 2008 report from Dr. Thomas Sabourin, a Board-certified orthopedic surgeon who provided a second-opinion evaluation for OWCP. Dr. Sabourin advised that appellant did not have residuals of the employment-related back condition.

## LEGAL PRECEDENT

Under FECA the term “disability” is defined as incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>6</sup> Disability is thus not synonymous with physical impairment which may or may not result in incapacity to earn the wages. An employee who has a physical impairment causally related to a federal employment injury but who nonetheless has the capacity to earn wages he or she was receiving at the time of injury has no disability as that term is used in FECA<sup>7</sup> and whether a particular injury causes an employee disability for employment is a medical issue which must be resolved by competent medical evidence.<sup>8</sup> Whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>9</sup>

The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup> Furthermore, it is well established that medical conclusions unsupported by rationale are of diminished probative value.<sup>11</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>12</sup> Rationalized medical evidence is medical evidence which includes a physician’s rationalized medical 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.<sup>13</sup> Neither the mere fact that a disease nor condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>14</sup>

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<sup>6</sup> See *Prince E. Wallace*, 52 ECAB 357 (2001).

<sup>7</sup> *Cheryl L. Decavitch*, 50 ECAB 397 (1999); *Maxine J. Sanders*, 46 ECAB 835 (1995).

<sup>8</sup> *Donald E. Ewals*, 51 ECAB 428 (2000).

<sup>9</sup> *Tammy L. Medley*, 55 ECAB 182 (2003); see *Donald E. Ewals*, *id.*

<sup>10</sup> *William A. Archer*, 55 ECAB 674 (2004); *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>11</sup> *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

<sup>12</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>13</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>14</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

## ANALYSIS

The accepted condition in this case is hearing loss in both ears. Appellant also had an additional accepted claim for aggravation of degenerative disc disease of the lumbar spine and under that claim began light duty in September 2001. In October 2002, she began work in the fiscal department of the base housing office and continued in that position until she retired on disability effective May 1, 2004. Appellant thereafter elected FECA benefits under the back claim that continued until August 3, 2008 when her medical and wage-loss benefits were terminated on the grounds that she had no residuals of the accepted back condition. Under the instant claim, accepted for binaural hearing loss, on March 29, 2010, she filed a claim for wage loss beginning August 3, 2008.

The Board finds that appellant did not meet her burden of proof to establish that she was totally disabled due to the accepted hearing loss condition for any period beginning on August 3, 2008. It is the employee's burden to establish disability<sup>15</sup> and whether a particular injury causes an employee to be disabled for work and the duration of that disability, are medical issues that must be proved by a preponderance of the reliable, probative and substantial medical evidence.<sup>16</sup> There is no evidence here to show that appellant's modified position in the employing establishment housing office was withdrawn prior to her disability retirement on May 1, 2004. There is also insufficient medical evidence to establish that she was totally disabled for the period beginning August 3, 2008 due to the accepted hearing loss condition.

The medical evidence relevant to the claimed period of disability includes undated reports from Mr. Tubbs, an audiologist. Audiologists are not included among the healthcare professionals recognized as a physician under FECA.<sup>17</sup> Mr. Tubbs reports therefore lack probative medical value.<sup>18</sup>

The Board further finds that the July 30, 2010 report of Dr. Jacobs is insufficient to meet appellant's burden. While Dr. Jacobs advised that due to her severe difficulty with communication she should be considered totally disabled, he did not demonstrate any specific knowledge of the requirements of the modified position she was performing at the time she retired in May 2004, did not explain whether the progression in her hearing loss was due to her previous noise exposure at work and did not explain with specificity why she could not work for the claimed period. As his opinion is insufficient to establish that appellant was totally disabled for the claimed period, the medical evidence of record is insufficient to establish entitlement to monetary compensation

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<sup>15</sup> See *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

<sup>16</sup> *Tammy L. Medley*, *supra* note 9.

<sup>17</sup> *Thomas O. Bouis*, 57 ECAB 602 (2006). Section 8101(2) of FECA provides that "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

<sup>18</sup> *Thomas O. Bouis id.*

The Board has long held that medical conclusions unsupported by rationale are of diminished probative value and insufficient to establish causal relationship.<sup>19</sup> While the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute certainty, neither can such opinion be speculative or equivocal. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>20</sup>

As there is no rationalized medical evidence contemporaneous with the periods of claimed disability, appellant failed to meet her burden of proof to establish entitlement to total disability compensation due to the accepted hearing loss condition for any period beginning on August 3, 2008.

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 did not meet her burden of proof to establish that she was entitled to disability compensation for the period August 3, 2008 to March 26, 2010 due to an employment-related hearing loss.

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<sup>19</sup> See *Albert C. Brown*, 52 ECAB 152 (2000).

<sup>20</sup> *A.D.*, 58 ECAB 149 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 10, 2012  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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