

FACTUAL HISTORY

On February 10, 2011 appellant, then a 67-year-old sheet metal mechanic, filed an occupational disease claim alleging that he sustained hearing loss as a result of exposure to loud noise in his federal employment. He first related his condition to his work on July 8, 2010.

Appellant submitted employing establishment health unit reports dated August 31, 1988 to February 17, 2011 and as a position description.

In a July 8, 2010 audiology evaluation report, Chris Duhon, an audiologist, noted that appellant had asymmetrical hearing loss in the right ear. He stated that appellant was no longer fit to work in hazardous noise.

OWCP advised appellant on March 9, 2011 of the deficiencies in his claim and requested additional information regarding his employment history, exposure to hazardous noise at work, development of his hearing loss, as well as medical documents concerning his hearing loss.

Appellant submitted a March 30, 2011 statement, in which he reviewed his employment history. Regarding his current employment, he noted that from August 1988 until February 28, 2011 his duties as a sheet metal worker exposed him to noise from sanding, band saws, drill motors and riveting guns.

In reports dated July 22 and September 21, 2010, Dr. Douglas F. Brewster, a Board-certified physician in otolaryngology, advised that appellant's audiogram showed a 40-decibel sensorineural hearing loss in his right ear and that his left ear was normal. He diagnosed appellant with Ménière's disease.

On May 19, 2011 OWCP referred appellant to a second opinion physician, Dr. Theodore Mazer, Board-certified in otolaryngology, for evaluation.

In a July 5, 2011 report, Dr. Mazer stated that appellant had unilateral tinnitus in his right ear only, with no history of any unilateral exposures to noise or greater exposures to noise on the right ear than the left over his years of federal employment. He concluded that appellant's loss of hearing was "highly unlikely" to be in any way related to his exposure to noise. Appellant had a history of no progressive hearing loss for the first 16 years of exposure, followed by a dramatic unilateral loss on the right in 2003 and again a couple of years later, despite no unilateral or increased noise exposure. He experienced two episodes of vertigo beginning around the same time as the hearing losses began, in addition to the extreme impairment and speech discrimination. Dr. Mazer found that appellant had retrocochlear disease and Ménière's disease. He concluded that nothing in the evaluation supported the claim of occupational injury. Dr. Mazer noted that appellant's left ear's hearing loss was consistent with his age, although "a nominal noise-induced hearing loss of 3,000 Hertz is not excluded," but there was no ratable hearing impairment. The audiogram dated July 5, 2011 showed for the left ear, hearing levels of 15, 15, 15 and 25 decibels at the respective frequencies of 500, 1,000, 2,000 and 3,000 Hertz. The equipment was calibrated on March 5, 2011.

On August 28, 2011 the district medical adviser reviewed Dr. Mazer's report and the July 5, 2011 audiometric test. He determined that appellant's loss of hearing in the right ear was

not employment related, while the loss of hearing in his left ear was causally related to his employment, but was not ratable. In accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), appellant had a zero percent sensorineural hearing loss in the left ear.

In a September 19, 2011 decision, OWCP denied appellant's claim on the grounds that he had failed to establish that he had sustained any hearing loss caused by his federal employment. It noted the right ear loss was unilateral while the left ear loss was typical of an individual of appellant's age.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

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;⁵ a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ 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.⁷

Appellant has the burden of establishing by weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁸ Neither the condition becoming apparent during a period of employment,

² *Id.*

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

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

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

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.⁹

The medical evidence required to establish causal relationship generally is 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.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the claimant¹¹ and must be one of reasonable certainty¹² explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹³

Section 8101(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. As nurses, physician's assistants, physical and occupational therapists are not "physicians" as defined by FECA, their opinions regarding diagnosis and causal relationship are of no probative medical value.¹⁴

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 cycles per second, the losses at each frequency are added up and averaged. Then, the fence of 25 decibels deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss: the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss. The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁵

Further, the requirements of the evidence to be used in evaluating occupational hearing-loss claims are defined by the Federal (FECA) Procedure Manual, which provides that the employee should undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that all

⁹ See *John W. Butler*, 39 ECAB 852, 858 (1988).

¹⁰ *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

¹² *John W. Montoya*, 54 ECAB 306 (2003).

¹³ *Judy C. Rogers*, 54 ECAB 693 (2003).

¹⁴ See *Roy L. Humphrey*, 57 ECAB 238 (2005).

¹⁵ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009).

audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association that the audiometric test results include both bone conduction and pure-tone air conduction thresholds; speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include the date and hour of examination; date and hour of the employee's last exposure to loud noise; a rationalized medical opinion regarding the relationship.¹⁶

ANALYSIS

Appellant alleged that he sustained hearing loss due to exposure to hazardous noise at his federal employment. The Board finds that his hearing loss in the right ear is not employment related and that he sustained no ratable hearing loss in his left ear.

Dr. Mazer, a second opinion Board-certified otolaryngologist, reviewed the factual background of appellant's employment provided in the statement of accepted facts, examined him and obtained audiometric testing on otologic examination. He found that appellant's hearing loss in his right ear was not due to his employment-related noise exposure. Dr. Mazer explained that appellant was not subject to unilateral noise exposure or greater exposures to noise on the right ear than the left over his years of federal employment. The hearing loss in appellant's right ear was much more severe. Dr. Mazer determined that the loss of hearing in the right ear, coupled with the vertigo episodes that appellant sustained were due to retrocochlear disease and Ménière's disease. As such, his hearing loss in the right ear was not employment related.¹⁷

The Board finds that the well-reasoned opinion of Dr. Mazer establishes that appellant's right ear hearing loss was not caused by his federal employment. Dr. Mazer fully explained the reasons why appellant's hearing loss in the right ear was not caused by work-related noise exposure. The medical adviser reviewed Dr. Mazer's findings on August 28, 2011 and concurred that appellant's right side hearing loss was not employment related. Appellant did not submit medical opinion evidence to support that his hearing loss in the right ear was caused by workplace noise exposure.¹⁸

With regard to appellant's left ear, the Board finds that appellant's hearing loss is employment related but not ratable. Both Dr. Mazer and the medical adviser reported that appellant's left side hearing loss was aggravated by noise exposure in his federal employment. The physicians found, however, that appellant's left ear hearing loss was not ratable. OWCP denied appellant's left ear hearing loss as not causally related to his employment; but this finding is not supported by the medical evidence of record. The Board finds that appellant's left ear hearing loss is causally related to his federal employment, but is not ratable.

¹⁶ *Joshua Holmes.*, 42 ECAB 231 (1990).

¹⁷ The Board also notes that this diagnosis is consistent with Dr. Brewster's findings.

¹⁸ Dr. Brewster's July 22 and September 21, 2010 medical reports did not address the issue of causation and is thus of limited probative value. *See Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports lacking a rationale on causal relationship have little probative value).

OWCP's medical adviser applied OWCP's standardized procedures to the September 3, 2010 audiogram performed for Dr. Mazer, testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of ear 15, 15, 15 and 25, respectively. These decibels were totaled at 70 and were divided by 4 to obtain the average hearing loss at those cycles of 17.5 decibels. The average of 17.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing monaural loss for the left ear.

An audiologist is not considered to be a physician under FECA.¹⁹ As such, the July 8, 2010 audiology evaluation issued by Chris Duhon has no probative value as it was not reviewed by a physician.

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 failed to establish that his right ear hearing loss was caused by his federal employment and that he sustained a ratable left ear hearing loss causally related to his federal employment.

¹⁹ See *Terry S. Laroque*, Docket No. 00-2033 (issued April 26, 2001) (where the claimant supported his request for reconsideration by submitting audiograms and an audiologist's report, the Board found that the evidence was irrelevant to the extent of his hearing loss inasmuch as the audiograms were not reviewed by a physician).

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: July 19, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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