

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained hearing loss in the performance of duty.

FACTUAL HISTORY

On June 15, 2010 appellant, then a 63-year-old electronic worker, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral hearing loss as a result of noise exposure from her federal employment. She stated that she began noticing aches and pains in her ears as a result of noise from the plating shop on or about August 11, 1975 and worked in noisy areas for 40 years. Appellant further noted that there were many rectifiers in the plating shop which caused a great deal of noise. The employing establishment reported that she was last exposed to the conditions alleged to have caused her illness on May 21, 2000 and retired on January 3, 2011.

By letter dated June 21, 2010, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding her employment history, when she related her hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that she provide medical documentation pertaining to any prior treatment she received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, whether she wore ear protection and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

In a June 9, 2010 narrative statement, appellant reported that she had worked in the plating shop since December 1969 for the last 40 years. She noted that she worked as an electroplater, testing equipment operator and instrument mechanic inspector. Noise exposure included loud machines, running vats and mechanical and electrical control systems. An official work history was also submitted for these employment positions.

In a June 14, 2010 letter, Marvin Warren, appellant's former coworker, reported that he worked with her for 10 years in electronics before becoming her supervisor and had noticed that she had problems hearing.

By letter dated June 30, 2010, the employing establishment controverted the claim stating that appellant was last exposed to noise on or about May 21, 2000 and failed to comply with OWCP's three-year time requirement to file a claim.

Audiograms and hearing conservation data were submitted from June 25, 1969 to March 7, 2000.

Appellant submitted a December 6, 2010 Department of the Air Force Memorandum from Major Brian Hobbs, chief audiology services, who reported that appellant's audiology test indicated a lot of hearing sensitivity or positive threshold shift. Major Hobbs reported that the medical evaluation confirmed that hearing changes occurred when compared to appellant's

previous baseline. Appellant's supervisor was notified of her hearing changes. Along with the memorandum, appellant submitted a November 10, 2010 audiogram which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 40, 20, 45 and 40 for the right ear and 20, 20, 30 and 35 for the left ear. A reference audiogram was provided dated June 25, 1969.

On April 7, 2011 appellant filed a claim for a schedule award.

By decision dated April 15, 2011, OWCP denied appellant's claim on the grounds that it was not timely filed under 5 U.S.C. § 8122. It found that she had failed to file a claim within three years of the date of injury, August 11, 1975. OWCP further noted that there was no evidence that a supervisor had actual knowledge of appellant's claim within 30 days of the date of injury.

By letter dated May 15, 2011, appellant requested reconsideration of OWCP's decision. She stated that she had asked her supervisor about filing a claim but she did not know OWCP rules. Appellant further stated that she was seeking compensation from January 2008 to December 2010 for exposure over the last 41 years to machinery, blowers, tools and test equipment.

OWCP referred appellant to Dr. Gregg S. Govett, a Board-certified otolaryngologist, for a second opinion evaluation on August 26, 2011. It prepared a statement of accepted facts addressing appellant's federal work duties and exposure to noise. OWCP stated that appellant worked in the plating shop beginning December 1969 as a trainee, was exposed to vats and rectifiers from December 1969 to March 1971, was an electroplater from March 1971 to November 1988 and then again from October 1992 to August 1993. It did not provide any details regarding the location, sources and frequency and decibel levels of noise exposure.

In his August 26, 2011 report, Dr. Govett noted that appellant worked for the employing establishment from 1969 to 2010. An audiogram was completed on that same date which revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 25, 25, 35 and 35 for the right ear and 25, 20, 35 and 35 for the left ear. Speech discrimination thresholds were 25 decibels bilaterally and the auditory discrimination score was 100 percent for the right ear and 96 percent for the left ear. Dr. Govett diagnosed bilateral sensorineural hearing loss. He answered yes when asked if the workplace exposure as described was sufficient as to intensity and duration to have caused the loss in question. However, Dr. Govett opined that the hearing loss was not due to appellant's workplace noise exposure because there was no hearing loss on appellant's August 26, 2011 audiogram other than what would be predicated on the basis of presbycusis. He further noted that her audiogram was reviewed from June 25, 1969 which showed that hearing was normal. In comparing the August 26, 2011 audiogram to the reference audiogram in 1969, there was not a significant threshold shift greater than 20 decibels in either frequency. In response to a form question, whether appellant's hearing loss was in part or all due to noise exposure encountered in her federal employment, he marked not due. Dr. Govett concluded that in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), appellant had 5.625 percent monaural hearing loss for the left ear and 7.5 percent monaural hearing loss for the right ear with binaural

hearing loss ratable at 5.9375 percent. He stated that she had reached maximum medical improvement on August 26, 2011 and did not recommend hearing aids.

On September 6, 2011 OWCP referred the case file along with Dr. Govett's report to a district medical adviser (DMA) to determine the extent of appellant's permanent partial impairment and date of maximum medical improvement.

On September 7, 2011 the DMA reported that based on the August 6, 2011 audiogram and the sixth edition of the A.M.A., *Guides*, appellant's calculated binaural hearing loss was 5.9 percent and she had reached maximum medical improvement on August 26, 2011. The DMA agreed with Dr. Govett in stating that the work-related noise exposure was not deemed sufficient to implicate it as a contributing factor to appellant's hearing loss as the hearing loss shown on audiogram was not greater than predicted on the basis of presbycusis. Hearing aids were not recommended.

By decision dated September 14, 2011, OWCP denied modification of its April 15, 2011 decision for failing to timely file her claim. It noted that appellant's statement indicated that her last date of work at the plating shop was in 1993 which would represent the last date she was exposed to the work-related noise.

By letter dated October 12, 2011, appellant requested reconsideration of OWCP's decision. She stated that she had previously informed OWCP that the dates of noise exposure should be changed to January 2008 to December 2010. Appellant further stated that her hearing changed from December 1969 to January 2008 after working in maintenance for 41 years. In support of her request, she submitted a November 16, 2011 audiogram.

By decision dated November 29, 2011, OWCP affirmed its September 14, 2011 decision, as modified to reflect that appellant had timely filed her claim because her agency was aware of the hazardous noise she was exposed to. It denied her claim, however, for failing to establish that her hearing loss was causally related to her employment noise exposure.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.⁴

Appellant has the burden of establishing by weight of the reliable, probative and substantial evidence that her hearing loss condition was causally related to noise exposure in her

³ Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

⁴ Michael E. Smith, 50 ECAB 313 (1999).

federal employment.⁵ Neither the condition becoming apparent during a period of employment, 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.⁶

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷

Although appellant must prove the facts alleged, proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish his or her claim, OWCP also has a responsibility in the development of the evidence.⁸ This is particularly true when the evidence is of the character normally obtained from the employing establishment or other government source.⁹ Title 20 of the Code of Federal Regulations section 10.118(a) states: The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

ANALYSIS

The issue is whether appellant established that she sustained employment-related hearing loss due to noise exposure during her federal employment. The Board finds this case is not in posture for decision and must be remanded for further development.

In order to establish a compensable injury, appellant is required to establish that her hearing loss resulted from noise exposure during her employment.¹⁰ The evidence received prior to the November 29, 2011 decision does not provide sufficient detail regarding appellant's exposure to employment-related noise.

Appellant submitted a Form CA-2 which alleged that she developed hearing loss in both ears as a result of employment-related noise since December 1969, noting that she was exposed to noise from the plating shop and rectifiers. In her June 9, 2010 narrative statement, she provided a detailed work history and referenced the different employment positions she held along with the length of time at each position. Appellant noted that she worked as an electroplater, testing equipment operator and instrument mechanic inspector. Noise exposure resulted from loud machines, running vats, blowers, tools and mechanical and electrical control

⁵ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁶ *See John W. Butler*, 39 ECAB 852, 858 (1988).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

⁸ *See Claudia A. Dixon*, 47 ECAB 168 (1995).

⁹ *R.E.*, Docket No. 07-1604 (issued January 17, 2008); *Willie A. Dean*, 40 ECAB 1208 (1989).

¹⁰ *See Leon Thomas*, 52 ECAB 202 (2001).

systems. An official work history was also submitted for these employment positions. The work history reflected that appellant worked around machinery with moving parts and objects.

The employing establishment submitted a number of audiograms and hearing conservation data dated June 25, 1969 to March 7, 2000. Although requested to do so, it failed, however, to provide any studies or evidence regarding appellant's duration and levels of exposure to hazardous noise during her federal employment. The employing establishment did not state that the requested information was unavailable. OWCP initially requested the employing establishment provide detailed information about appellant's noise exposure in a June 21, 2010 development letter, including copies of noise level surveys for each work location, the sources and periods of noise exposure and whether she wore ear protection. However, it failed to pursue its request. Because the levels and duration of exposure to hazardous noise is the type of evidence normally obtained from the employing establishment, OWCP has a particular responsibility to develop this evidence.¹¹

The Board further notes that, while OWCP properly referred appellant to Dr. Govett for a second opinion evaluation, it failed to provide the physician with an accurate and complete statement of accepted facts because no factual evidence was obtained regarding the specific levels and duration of noise exposure during appellant's federal employment.¹² The Board finds that Dr. Govett relied on an incomplete factual background and his medical report requires further clarification.¹³

In his August 26, 2011 medical report, Dr. Govett diagnosed bilateral sensorineural hearing loss, noting that appellant's workplace exposure as described was sufficient as to intensity and duration to have caused the loss in question. However, he opined that the hearing loss was not due to her workplace noise exposure because there was no hearing loss on appellant's August 26, 2011 audiogram other than what would be predicated on the basis of presbycusis. Dr. Govett stated that appellant's hearing loss was due to presbycusis because her June 25, 1969 audiogram revealed normal hearing when compared to her August 26, 2011 audiogram with no significant threshold shift greater than 20 decibels in either frequency.

The Board finds that Dr. Govett's report is not sufficient on the issue of causal relationship. Although Dr. Govett diagnosed bilateral sensorineural hearing loss due to presbycusis,¹⁴ he stated that none of appellant's hearing loss was due to federal employment-related noise exposure. He also stated that her workplace exposure as described was sufficient as to intensity and duration to have caused the loss in question. Dr. Govett's opinion regarding the cause of appellant's hearing loss is therefore equivocal in nature.¹⁵ While he provided an

¹¹ *Id.*; see also *R.B.*, Docket No. 08-1662 (issued December 18, 2008).

¹² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.809.4(a) (September 2009).

¹³ *Herbert A. Wirth, Jr.*, Docket No. 95-125 (issued September 24, 1996).

¹⁴ Presbycusis is defined as progressive bilaterally symmetrical perceptive hearing loss occurring with advancing age. See DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th Edition (1988).

¹⁵ *D.F.*, Docket No. 09-1080 (issued December 7, 2009); *Michael R. Shaffer*, 55 ECAB 386 (2004).

explanation as to why her hearing loss was due to presbycusis, he did not sufficiently explain whether the occupational noise exposure contributed to her hearing loss. The Board has held that a medical opinion not fortified by rationale is of diminished probative value.¹⁶

Although the statement of accepted facts listed the different positions appellant held, specific sources of noise and noise levels were not provided by the employer and thus not addressed by OWCP. The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.¹⁷ Dr. Govett was not provided with adequate information relevant to appellant's history of occupational noise exposure.¹⁸

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹⁹ The levels and duration of exposure to hazardous noise is the type of evidence normally obtained from the employing establishment, OWCP has a responsibility to develop this evidence.²⁰ OWCP did not obtain sufficient information about the duration and level of appellant's noise exposure during the course of her federal employment. Because it referred appellant for a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether appellant's hearing loss was caused by her federal employment.²¹

The Board will remand the case for OWCP to request the employing establishment to submit additional information about appellant's noise level exposure, including copies of noise level surveys and specific decibel levels for each work location.²² It should then amend the statement of accepted facts to describe the noise levels at the employing establishment and the length and period of appellant's exposures.²³ OWCP should refer the case record and amended

¹⁶ *A.D.*, 58 ECAB 149 (2006).

¹⁷ *L.R.*, Docket No. 06-1942 (issued February 20, 2007).

¹⁸ To be probative, a physician's report must be based on a complete factual and medical background. *R.W.*, Docket No. 08-275 (issued June 3, 2008).

¹⁹ *Richard Kendall*, 43 ECAB 790 (1992); *Isidore J. Gennino*, 35 ECAB 442 (1983).

²⁰ *Id.*; see also *R.B.*, Docket No. 08-1662 (issued December 18, 2008).

²¹ See *Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

²² It is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 decibels. However, acoustic trauma may also result from decibel levels below 85 decibels if exposure is specifically prolonged. Consequently, regardless of appellant's specific decibel level of exposure, the referral physician must also consider whether the employment-related noise exposure was specifically prolonged to result in acoustic trauma. Such a question is medical in nature and should be resolved by a Board-certified otolaryngologist. *Supra* note 18. See also *R.B.*, *supra* note 20.

²³ See *David Rossman*, 9 ECAB 454 (1957) (where the Board remanded the case finding that the record was devoid of evidence from the employing establishment and the claimant regarding the levels and length of noise exposure and, thus, was not in posture for decision regarding the claimant's claim for hearing loss); *S.E.*, Docket No. 08-2243 (issued July 20, 2009).

statement of accepted facts to Dr. Govett for clarification on his opinion.²⁴ Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that this case is not in posture for a decision regarding whether appellant established that she sustained an employment-related hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the November 29 and September 14, 2011 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: September 5, 2012
Washington, DC

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

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

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

²⁴ When a medical evaluation is made at its request, OWCP has the responsibility of obtaining a proper evaluation. *Leonard Gray*, 25 ECAB 147, 151 (1974).