United States Department of Labor
Employees' Compensation Appeals Board

E.T., Appellant	)	
and	)	**Docket No. 13-200**
	)	**Issued: April 12, 2013**
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Barbourville, KY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 5, 2012 appellant filed a timely appeal from an October 24, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained hearing loss causally related to factors of his federal employment.

On appeal, appellant contends that he sustained work-related hearing loss for which he required hearing aids.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On March 27, 2012 appellant, then a 56-year-old coal mine safety and health inspector, filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx050. On April 10, 2010 he first realized that his hearing loss in both ears was caused by noise exposure from mining equipment at the employing establishment.[2]

In an undated statement, appellant related that during 70 percent to 90 percent of his career he was exposed to noise 8 to 10 hours a week. His current job duties required him to be around loud equipment noise approximately 40 hours a week, 8 to 6 hours a day. Appellant wore hearing protection. He had difficulty hearing conversations with his family and coworkers and had ringing in both ears. Appellant had no prior complications or complaints related to hearing loss and received no treatment for this condition.

Appellant submitted hearing conversation annual audiograms from September 6, 2000 to March 12, 2012 which showed hearing loss and recommended continued annual testing. He also submitted documents related to his prior hearing loss claim under OWCP File No. xxxxxx716, including Dr. Arnold's October 18, 2010 report.

In a March 28, 2012 memorandum, the employing establishment stated that commencing in 1988 appellant was exposed to excessive hazardous equipment noise while performing his work duties based on noise survey results.

By letter dated June 28, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional factual and medical evidence to establish that his hearing loss was due to exposure to hazardous noise after October 18, 2010, the date of Dr. Arnold's evaluation. On June 28, 2012 OWCP also requested that the employing establishment respond to appellant's allegations and provide a copy of all medical examinations pertaining to his hearing or ear problems, including any preemployment examinations and audiograms.

In a July 9, 2012 statement, appellant described the development of his hearing loss beginning on April 10, 2010, which he attributed to noise exposure at the employing establishment. He contended that his condition continued to worsen due to the exposure. Earmuffs and earplugs were provided, but were not sufficient when noise levels exceeded certain decimals.

In e-mails dated August 6 and 8, 2012, the employing establishment stated that from March 2008 to March 2012 appellant worked as a mine safety and health specialist until he moved to its ventilation group as a ventilation specialist. Both positions had the same

[2] On April 12, 2010 appellant filed a Form CA-2 under OWCP File No. xxxxxx716 alleging that on April 8, 2010 he realized that his hearing loss in both ears was caused by noise exposure from mining equipment at the employing establishment. In a November 17, 2010 decision, OWCP denied his claim. It relied on an October 18, 2010 medical report of Dr. Henry G. Arnold, Jr., a Board-certified otolaryngologist and OWCP referral physician, who found that appellant's bilateral high frequency sensorineural hearing loss was not causally related to his federal employment. In a December 23, 2010 decision, OWCP denied appellant's request for further merit review of his claim pursuant to 5 U.S.C. § 8128(a).

descriptions and functional job requirements as appellant's prior coal mine inspector position. While working as a ventilation specialist, appellant was exposed to various mine machinery at 83.8 decibels (dBAs) to 115.5 dBAs four hours a day, approximately three days a week. He was exposed to noise from underground mining equipment 28 to 30 hours a week while working as a mine safety and health specialist. The employing establishment submitted a copy of this position.

On August 22, 2012 OWCP referred appellant to Dr. Frank B. Little, Jr., a Board-certified otolaryngologist, for a second opinion evaluation. It prepared a statement of accepted facts (SOAF) which noted that he was exposed to noise from mining equipment from October 2000 to the present and in his nonfederal employment from 1980 to 1998. OWCP also noted the noise level information provided by the employing establishment.

In a September 18, 2012 form report, Dr. Little stated that an audiogram was completed on September 4, 2012 which revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 hertz: 25, 45, 70 and 70 for the right ear and 25, 40, 70 and 75 for the left ear. Speech discrimination thresholds were 25 dBAs bilaterally and the auditory discrimination score was 92 percent for the right ear and 88 percent for the left ear. Dr. Little also reported that appellant's physical examination findings were within normal limits. He diagnosed sensory hearing loss, stating that there was no significant change since 2010. Dr. Little advised that appellant's workplace exposure was of sufficient intensity and duration to have caused the hearing loss in question. He recommended noise protection and hearing aids. Dr. Little listed that the statement requiring him to provide an opinion as to whether the diagnosed condition was or was not due to noise exposure encountered in appellant's federal employment was not applicable.

On September 18, 2012 OWCP's medical adviser reviewed the medical record. He advised that appellant did not have any hearing loss due to noise exposure in his federal employment based on Dr. Arnold's October 18, 2010 report and the September 4, 2012 audiogram. The medical adviser concluded that a Form CA-51 report could not be prepared.

In an October 24, 2012 decision, OWCP denied appellant's hearing loss claim. It found that the weight of the medical opinion, as represented by Dr. Little's September 18, 2012 report, did not establish that his hearing loss was caused by noise exposure in his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence[3] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.[7] The mere fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[8]

ANALYSIS

There is no dispute that appellant was exposed to loud noise while working at the employing establishment. The issue is whether such exposure caused his diagnosed hearing loss. The Board finds that this case is not in posture for decision.

OWCP relied on the report of Dr. Little, a Board-certified otolaryngologist and an OWCP referral physician, to deny appellant's hearing loss claim. In his September 18, 2012 form report, Dr. Little presents internally inconsistent findings. He diagnosed sensory hearing loss and stated that there was no significant change since 2010. Dr. Little also stated that appellant's workplace exposure was sufficient in intensity and duration to have caused his hearing loss. He noted that the statement requiring him to provide an opinion as to whether appellant's hearing loss was or was not due to noise exposure encountered in his federal employment was not applicable.

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.[9] When OWCP selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the

[5] *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

[6] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009); *D.I.*, 59 ECAB 158 (2007).

[7] *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

[8] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[9] *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

physician's report and to have a proper evaluation made.[10] OWCP referred appellant to Dr. Little for examination and opinion on causal relation. It has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused by his federal employment.[11] Dr. Little's opinion on causal relation is equivocal. He did not provide a rationalized opinion on the cause of appellant's hearing loss.[12]

The Board will remand the case to obtain a supplemental report from Dr. Little clarifying whether appellant sustained hearing loss causally related to his workplace noise exposure. OWCP should combine the case records of appellant's hearing loss claims and refer the evidence to Dr. Little for review. After such other development as OWCP deems necessary, it should issue a *de novo* decision.[13]

CONCLUSION

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

[10] *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

[11] *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

[12] *See Roy L. Humphrey*, 57 ECAB 238 (2005) (to be probative, the medical opinion must be of reasonable medical certainty and supported by medical rationale).

[13] On appeal, appellant contended that he sustained an employment-related hearing loss for which he required hearing aids. In view of the Board's disposition of the case, it need not address his contention.

ORDER

IT IS HEREBY ORDERED THAT the October 24, 2012 decision of the Office of Workers' Compensation is set aside and remanded for further action consistent with this decision of the Board.

Issued: April 12, 2013
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