



## **FACTUAL HISTORY**

On March 30, 2012 appellant, then a 69-year-old former firefighter, filed an occupational disease claim alleging that on September 1, 1980 he first realized that his hearing loss was due to noise exposure in the course of his federal employment. He was exposed to extreme noises on the airfield. Appellant was also assigned to structural stations where he was exposed to noise from bells, sirens and jet engines for 26 years. He retired from the employing establishment on February 3, 1993. On the claim form, the employing establishment stated that appellant first reported his condition to a supervisor in 1980.

By letter dated May 21, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence. On May 21, 2012 it also requested that the employing establishment submit evidence regarding his claim.

Appellant provided a list of his federal and nonfederal employment beginning on January 15, 1961 in which he stated that he first noticed the hearing loss in 1969 and was last exposed to extremely loud noises on his retirement date, a description of work-related noise exposure and his driver/operator position at the employing establishment and audiograms from the employing establishment conducted between July 13, 1967 and December 9, 1991 as part of an annual fitness-for-duty examination. He also submitted a Beltone audiogram performed on December 14, 2011.

By letter dated August 24, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Shea for a second opinion. In a September 26, 2012 medical report, Dr. Shea obtained a history that appellant had hearing loss for many years and that as a firefighter from 1966 to 1993 he was exposed to loud noise without hearing protection. Since 1993, appellant worked as a maintenance supervisor at a school. Dr. Shea reported a history of appellant's medical treatment and family background. He noted that appellant was retired. Dr. Shea listed normal findings on physical examination. An audiogram performed that day revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 65, 65, 70 and 75 for the right ear and 65, 75, 70 and 80 for the left ear. Dr. Shea diagnosed severe bilateral sensorineural hearing loss. He stated that there was insufficient masking for bone conduction at 250, 500 and 1,000 Hz. Appellant's discrimination scores were unusually high for the degree of subjective hearing loss. Dr. Shea advised that appellant's hearing loss was not caused by employment-related noise exposure. He related that appellant's last hearing test as a firefighter in 1991 showed moderate hearing loss of approximately 45 decibels on the left and 55 on the right that was centered around 4,000 cycles in both ears, but his current subjective responses were considerably decreased. Dr. Shea stated that "this suggests the majority of his loss occurred after his employment as a firefighter in 1993." Additionally, speech discrimination was better than expected for appellant's degree of loss and his auditory brainstem response and otoacoustic emissions results suggested better hearing than his subjective responses. Dr. Shea advised that the audiogram results showed that he was able to have a conversation without visual cues at normal conversational level, thus suggesting some degree of functional hearing loss at the present time.

In an October 19, 2012 decision, OWCP denied appellant's hearing loss claim, finding that the medical evidence was insufficient to 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<sup>2</sup> 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.<sup>3</sup> In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to 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.<sup>4</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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<sup>2</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>3</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>5</sup> *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).

<sup>6</sup> *D.S.*, Docket No. 09-860 (issued November 2, 2009); *B.B.*, 59 ECAB 234 (2007); *Solomon Polen*, 51 ECAB 341 (2000).

<sup>7</sup> *Patricia J. Bolleter*, 40 ECAB 373 (1988).

## ANALYSIS

The Board finds that this case is not in posture for decision and must be remanded for further development.<sup>8</sup>

OWCP denied appellant's claim based on the September 26, 2012 report of Dr. Shea, an OWCP referral physician, who found that appellant's severe bilateral sensorineural hearing loss was not caused by employment-related noise exposure. The Board finds, however, that Dr. Shea failed to provide a fully rationalized medical opinion explaining his conclusion. Dr. Shea did not provide a clear explanation of why work-related noise exposure was not the cause of appellant's hearing loss. He stated that appellant's last hearing test as a firefighter in 1991 showed moderate hearing loss, but his current subjective responses were considerably decreased which suggested that "the majority" of his hearing loss occurred after he retired in 1993. This opinion does not foreclose the possibility that appellant's exposure to noise at the employing establishment caused or contributed to his hearing loss. The Board notes that any contribution of employment factors is sufficient to establish the element of causal relation.<sup>9</sup> The Board finds, therefore, that Dr. Shea's medical opinion is not sufficiently rationalized to exclude causal relationship.

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.<sup>10</sup> Once OWCP undertook development of the evidence by referring appellant to a second opinion physician, it had the duty to secure an appropriate report addressing the relevant issues.<sup>11</sup> As Dr. Shea failed to provide a rationalized medical opinion to support his findings, the case will be remanded to OWCP for further development of the medical evidence. After such further development as OWCP deems necessary, a *de novo* decision should be issued regarding the issue of whether appellant sustained a hearing loss causally related to factors of his federal employment.

On remand, OWCP should prepare a statement of accepted facts that includes appellant's exposure to noise at the employing establishment and the length and period of such exposures. It should then obtain a rationalized opinion regarding whether his hearing loss was causally related to factors of his federal employment.

## CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant met his burden of proof to establish that he has an employment-related hearing loss.

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<sup>8</sup> C.S., Docket No. 10-2030 (issued June 9, 2011).

<sup>9</sup> See *L.R. (E.R.)*, 58 ECAB 369 (2007).

<sup>10</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>11</sup> See *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 19, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 1, 2013  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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