

electrical and air equipment in his federal employment.² The employing establishment stated that he worked mainly in an office environment and was only occasionally required to go into buildings, for an average of 30 minutes per week, where air wrenches and other power tools were used. Appellant was provided with earplugs when working in a noisy area.

OWCP referred appellant to Dr. Charles E. Hollingsworth, II, a Board-certified otolaryngologist, for a second opinion examination. In a January 15, 2003 report, Dr. Hollingsworth reviewed a statement of accepted facts, appellant's medical records and history and conducted a physical examination. He stated that the earliest available audiogram from May 1969 and several audiograms from the 1970s showed an already established bilateral severe high frequency hearing loss between 50 and 60 decibels, left slightly worse than the right. A January 15, 2003 audiogram performed on his behalf, showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 10, 5, 10 and 65 for the right ear and 10, 15, 10 and 75 for the left ear. Dr. Hollingsworth stated that the hearing loss was 20 decibels worse than appellant's initial audiogram in 1969 and that his low and mid-frequency hearing was normal. He derived appellant's percent of hearing loss according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), as zero right ear, zero left ear and zero binaurally. Dr. Hollingsworth concluded that appellant had bilateral severe high frequency neurosensory hearing loss, left worse than right, unrelated to his federal employment. Dr. Hollingsworth opined: "I do not think this hearing loss is due to prolonged noise exposure" and that it was "most probably a gradual deterioration of an already established loss." He noted that appellant was not a hearing aid candidate.

On October 22, 2003 Dr. H. Mobley, an OWCP medical adviser, reviewed Dr. Hollingsworth's report and the audiometric test of January 15, 2003. He determined that appellant's high frequency hearing loss was not related to noise exposure in his federal employment as it was present at the time of entry into federal service. The amount of worsening was compatible with presbycusis. Dr. Mobley concluded that, in accordance with the fifth edition of the A.M.A., *Guides* (5th ed. 2001), appellant had a four percent monaural hearing loss in the left ear. He further opined that hearing aids should not be authorized.

By decision dated February 1, 2013, OWCP denied the claim finding that the medical evidence of record failed to establish a causal relationship between appellant's hearing loss and factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA, and that an injury⁴ was sustained in the performance of duty. These

² On June 12, 2003 appellant filed a claim for a schedule award.

³ 5 U.S.C. §§ 8101-8193.

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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

ANALYSIS

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

The Board notes that Dr. Hollingsworth's report was prepared on January 15, 2003 and the medical adviser's report was prepared on October 22, 2003 and were over 10 years old at the time OWCP issued its February 1, 2013 decision. There is no explanation in the record as to why the case lay dormant for over 10 years. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomatology or disability determination.⁸ The Board finds that Dr. Hollingsworth's January 15, 2003 report and OWCP's medical adviser's October 22, 2003 report were stale medical evidence and a referral to another OWCP physician is warranted.

Accordingly, OWCP shall further develop the medical evidence and obtain a more current second opinion evaluation of appellant's hearing loss to determine whether he developed bilateral hearing loss in the performance of duty, causally related to factors of his federal employment. Following this and such other development as OWCP deems necessary, it shall issue a *de novo* decision.

⁵ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ See *Keith Hanselman*, 42 ECAB 680 (1991); *Ellen G. Trimmer*, 32 ECAB 1878 (1981) (reports almost two years old deemed invalid basis for disability determination and loss of wage-earning capacity).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further development consistent with this decision of the Board.

Issued: August 21, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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