



service demonstrated binaural hearing loss. Appellant did not submit the results of the examination.

By letter dated April 22, 2013, OWCP requested additional factual and medical evidence from appellant and to respond to inquiries regarding his duties and facts surrounding his condition. It afforded him 30 days to submit the additional evidence.

In a position description dated May 23, 2006, appellant's duties as a tools and parts attendant were described as keeping stocks of tools and parts used by shop employees in their work, issuing items to shop employees as needed, keeping track of the whereabouts of items, monitoring returns, setting up storage locations, making determinations on tool repair versus disposal, calibrating tools, and finding suitable substitutes for tools and parts.

By decision dated June 14, 2013, OWCP denied appellant's claim, finding that the factual evidence was not sufficient to establish noise exposure in his employment. It noted that appellant had not submitted evidence to explain how his hearing loss occurred or medical evidence to establish that he had a diagnosed condition causally related to factors of his federal employment.

### **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.<sup>2</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>3</sup>

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

### **ANALYSIS**

On April 16, 2013 appellant filed an occupational disease claim alleging that he sustained binaural hearing loss as a result of his federal employment. OWCP denied his claim, finding that he had not submitted sufficient factual and medical evidence to establish a hearing loss due to factors of his federal employment.

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313, 315 (1999).

<sup>4</sup> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

In support of his claim, appellant sent a notification of personnel action and a position description. This evidence does not document the nature or extent of any noise to which he was exposed while employed. The position description of May 23, 2006, listed appellant's duties as a tools and parts attendant but did not address the noise caused by the tools with which he worked or the hours of any such exposure.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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>5</sup>

The Board finds that appellant has not submitted adequate evidence pertaining to the noise alleged to have caused or contributed to his hearing loss. Furthermore, appellant did not submit any medical evidence to establish that he was diagnosed with a hearing loss.

As appellant did not submit sufficient factual and medical evidence in support of his claim that he developed hearing loss as a result of identified employment factors, he has not met his burden of proof.

Appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>6</sup> 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 did not establish that he developed hearing loss in the performance of duty because he did not meet his burden of proof to establish the factual component of fact of injury.

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<sup>5</sup> *Id.*

<sup>6</sup> 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 14, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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