

realized it resulted from his employment on June 1, 2011. Appellant first reported it to his supervisor on February 15, 2012. He did not stop work and continues to be exposed to noise at work.

Appellant submitted annual audiograms from the employee health unit dated April 25, 2006, August 24, September 14 and October 10, 2011 and February 21, 2012, which showed progressive moderate left sensorineural hearing loss. He stated that in the beginning of fiscal year (FY) 2010 the employing establishment noticed mild to moderate hearing loss through an annual hearing examination and referred him to an audiologist.

In evaluations dated from January 12 to April 10, 2012, Dr. Kathleen Kay Conventry, an audiologist, related appellant's complaints of decreased hearing sensitivity in the left ear with tinnitus. She noted that he had 21 years of military noise exposure with hearing protection, noise exposure at his employing establishment from construction without hearing protection and recreational noise exposure from target shooting with hearing protection. Dr. Conventry reviewed appellant's previous hearing evaluations and noted decreased hearing in the left ear for the past three years. Otoscopic examination revealed both canals were clean. Pure tone air and bone conduction audiometry indicated clinically normal hearing sensitivity in the right ear and mild sensorineural hearing loss below 600 hertz (Hz) in the left ear. Dr. Conventry opined that appellant had stable hearing loss in the left ear and normal hearing in the right ear. She diagnosed left sensorineural hearing loss and tinnitus.

By letter dated March 26, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim and requested additional evidence to demonstrate that he sustained hearing loss as a result of factors of his employment. In a separate letter of the same date, it also requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure, and whether hearing protection was provided.

In an April 10, 2012 letter, the employing establishment stated that appellant was exposed to noise while he worked at the Paso Del Norte Port of Entry and Bridge in El Paso, TX. It noted that as a designated officer appellant was exposed to a high decibel conveyer generator that was used when the employing establishment was destroying contraband. As a customs officer in El Paso, appellant was exposed to high noise created by the tools utilized to remove contraband including, drills, electric high powered saws and other metal cutters. He was also exposed to noise four to five hours a day, five days a week from commercial truck traffic. The employing establishment noted that the type of ear protection provided was soft foam earplugs, but they were not mandatory to be worn.

In an April 12, 2012 questionnaire, appellant stated that, as a logistic sergeant in the U.S. Army, he had been exposed to intermittent noise from vehicle maintenance checks and services and occasional noise from weapons qualification with a semi-automatic weapon. He claimed that after retirement from the U.S. Army he was cleared of any ear, nose and throat (ENT) problems. Appellant reported that as a customs officer from September 2001 to February 2003 at the Los Angeles International Airport he was exposed to noise from incoming international air passenger and jet engines while working the airport tarmac. He wore outer earmuff protection while working on the tarmac.

As a customs officer from February 2003 to 2006 in the Long Beach Seaport, appellant was exposed to noise from trucks, cargo container crane noise, international cargo vessel noise and railroad car train noise. He worked without hearing protection. Appellant was also required to participate in a firearms qualification every three months. He wore soft inner earplugs and outer earmuff protection while shooting. In El Paso, TX beginning in 2006, appellant was exposed to high level noise from drills, engineering equipment, scoop loaders and demolition. He was also exposed to vehicle traffic, loading dock operations, dismantling operations and radio noise. Appellant first noticed occupational hearing blockage in his left ear sometime in September 2010, which was confirmed by the employing establishment on or about February 2011. He reported that he never had any ear or hearing problems and that he did not have any current or past hobbies that exposed him to loud hazardous noise.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Ronald Blumenfeld, a Board-certified otolaryngologist, for a second-opinion examination and an audiological evaluation. In a May 7, 2012 report, Dr. Blumenfeld reviewed appellant's records, including the statement of accepted facts. Upon examination, he observed normal canals and drums and normal drum mobility. Basic fork tests were positive in the right and left and consistent with nerve damage in the left ear. Dr. Blumenfeld diagnosed left sensorineural hearing loss. He reported that appellant's hearing loss was not a result of acoustic trauma, but from cochleitis with nerve damage that was possibly viral. Dr. Blumenfeld concluded that appellant's hearing loss was not due to noise exposure during federal employment. An audiogram performed that day with testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of the right ear as 5, 15, 5 and 10 respectively. Testing at the same frequency levels revealed decibel losses of 40, 40, 40 and 45 of the left ear. Dr. Blumenfeld calculated 0 percent monaural impairment in the right ear, 24.38 percent monaural impairment in the left ear and 9.06 percent binaural hearing impairment. The date of maximum medical improvement was May 7, 2012. Dr. Blumenfeld reported that hearing aids were not recommended at the present time but may be needed for the left ear later.

In a May 24, 2012 report, a medical adviser reviewed Dr. Blumenfeld's May 7, 2012 second-opinion examination report and statement of accepted facts. He noted Dr. Blumenfeld's finding that appellant did not have hearing loss due to noise exposure in his federal employment. The medical adviser reported a date of maximum medical improvement of May 7, 2012 and indicated that appellant's hearing loss was not caused by exposure to occupational noise at work. He did not authorize hearing aids.²

In November 2 and December 6, 2012 progress notes, Dr. Conventry reported that appellant was examined earlier in the year for complaints of decreased hearing in the left ear. She noted that three audiological evaluations indicated mild hearing loss in the left ear and clinically normal hearing in the right ear. Dr. Conventry noted that appellant was administered hearing aids for the left ear.

² The Board notes that in his narrative report, the medical adviser incorrectly states that Dr. Blumenfeld found right ear hearing loss. In his handwritten evaluation form, however, the medical adviser correctly notes that appellant had left ear hearing loss. The Board finds that the error in the medical adviser's narrative report was corrected and does not affect the posture of this case.

In a decision dated March 6, 2012, OWCP denied appellant's claim due to insufficient medical evidence. It accepted that appellant was exposed to noise during his federal employment but found that the medical evidence failed to establish that his hearing loss was causally related to the established work-related noise exposure.

On March 19, 2013 appellant requested an examination of the written record. He stated that during his federal employment he endured numerous high level noise exposures and related the various tools and noise he was exposed to and the duration of the noise exposure. Appellant reported that he never had any issues with his ears until working at the employing establishment. He noted that he obtained a second opinion through OWCP and a third opinion from his primary care physician. Appellant related that his physicians informed him on several occasions that it was most like than not that his left ear hearing loss occurred through the occupational hazards he was exposed to on a daily basis. He requested that OWCP reach a decision in his favor.

By decision dated July 12, 2013, an OWCP hearing representative affirmed the March 6, 2012 decision denying appellant's hearing loss claim.

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 evidence³ 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 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 Neither the fact that appellant's condition became apparent during a

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).

⁵ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

⁶ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

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

period of employment nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.⁸

ANALYSIS

Appellant alleged that he sustained hearing loss in his left ear as a result of factors of his employment. OWCP accepted that appellant was exposed to noise while working as a customs and border patrol officer at the employing establishment but denied his claim due to insufficient medical evidence. The Board finds that the medical evidence fails to establish that appellant's hearing loss was causally related to the accepted employment-related noise exposure.

OWCP referred appellant to Dr. Blumenfeld for a second-opinion evaluation regarding the extent of any employment-related hearing loss. In a May 7, 2012 report, Dr. Blumenfeld reviewed the medical record and conducted an examination. He observed normal canals and drums and normal drum mobility. Dr. Blumenfeld reported that basic fork tests were positive in the right and left and consistent with nerve damage in the left ear. He diagnosed left sensorineural hearing loss and noted a date of maximum medical improvement of May 7, 2012. Although he indicated that appellant worked in a loud noise environment, Dr. Blumenfeld explained that appellant's hearing loss was not a result of acoustic trauma, but from cochleitis with nerve damage that was possibly viral. He concluded that appellant's hearing loss was not due to noise exposure during federal employment. In a May 24, 2012 report, a medical adviser reviewed the medical evidence, including Dr. Blumenfeld's second-opinion examination report and agreed with the finding that appellant's hearing loss was not caused by exposure to occupational noise at work.

The Board finds that the medical evidence does not support that appellant has any hearing loss causally related to the accepted employment-related noise exposure. Dr. Blumenfeld reviewed appellant's medical records, conducted an examination and provided a reasoned opinion based on examination findings explaining why the hearing loss was not due to the employment-related noise exposure. The medical adviser agreed with Dr. Blumenfeld's opinion finding no causal relationship. The Board finds that the medical evidence is insufficient to establish appellant's claim as it did not find hearing loss due to the established employment-related noise exposure. There is no other medical evidence supporting that his hearing loss was related to his employment. Thus, appellant has not met his burden of proof to establish his claim.

The additional evidence appellant submitted from Dr. Conventry is insufficient to overcome the weight of Dr. Blumenfeld's second-opinion examination report. The Board notes that, while Dr. Conventry diagnosed sensorineural left hearing loss, there is no indication in the record that the report from the audiologist represented an opinion by a physician. The Board has pointed out that an audiologist is not a physician within the meaning of FECA and is therefore not in a position to give a medical opinion.⁹ The audiologist's opinion regarding the medical cause of appellant's hearing loss is therefore of no probative medical value.¹⁰

⁸ *Kathryn Haggerty*, 45 ECAB 383 (1994).

⁹ *Mario Albert Marcoccio*, 32 ECAB 43 (1944); see 5 U.S.C. § 8101(2).

¹⁰ See *Thomas O. Bouis*, 57 ECAB 601 (2006).

On appeal, appellant contends that OWCP's decision was not supported by the evidence and noted that the documents he submitted demonstrated that he sustained hearing loss as a result of noise exposure at work. As previously stated, however, the weight of the medical evidence failed to establish that his hearing loss was causally related to his accepted employment-related noise exposure. The Board finds, therefore, that appellant has not established that he has an employment-related hearing loss.

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 has not established that his hearing loss was causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the March 6 and July 12, 2013 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 17, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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