

**United States Department of Labor
Employees' Compensation Appeals Board**

J.M., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

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**Docket No. 12-1716
Issued: January 15, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 8, 2012 appellant filed a timely appeal from a July 12, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish that he developed bilateral sensorineural hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On March 30, 2012 appellant, then an 80-year-old engineering technician, filed an occupational disease claim alleging hearing loss due to noise exposure in the course of his

¹ 5 U.S.C. § 8101 *et seq.*

federal employment. He stated that he worked around loud noise. Appellant became aware of his condition and realized that it resulted from his employment on January 1, 1987. He retired on May 5, 1987.

On May 1, 2012 OWCP advised appellant that the evidence was insufficient to establish his claim and requested additional evidence.

In a March 21, 2012 consultation report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, related appellant's complaints of progressive hearing loss for approximately 15 years and of intermittent tinnitus being more severe in the right ear. He noted that from 1951 to 1955 appellant was on active duty with the U.S. Air Force and experienced noise exposure. From 1955 to 1987, appellant was employed at the employing establishment and worked in areas with probable noise exposure. He was provided with ear protection. From 1987 to 1999, appellant was employed in the private sector as an engineer where he also worked in areas with noise exposure. He was provided with ear protection. Dr. Randolph reported that appellant retired from civil service in 1987 and had been unemployed since 1999.

Upon examination, Dr. Randolph observed that both external auditory canals were normal and air condition was greater than bone conduction bilaterally. Audiometric testing revealed mild high tone sensorineural hearing loss in appellant's left ear and rapidly sloping high frequency sensorineural hearing loss in the right ear. An audiogram performed that day revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 10, 30, 55 and 70 for the right ear and 10, 20, 20 and 15 for the left ear. Dr. Randolph diagnosed bilateral sensorineural hearing loss. He stated that the high tone in appellant's left ear for frequencies above 4,000 cycles per second was no greater than what would be expected on the basis of presbycusis, but his right ear sensorineural hearing loss was compatible with hearing loss at least aggravated by past noise exposure. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Randolph opined that appellant had a ratable hearing loss of zero in the right ear, 24.375 percent in the left ear, and 4.06 percent binaural hearing loss. No additional rating for tinnitus was indicated. Dr. Randolph recommended hearing aids for the right ear only.

Appellant submitted audiograms dated from December 15, 1983 to February 16, 2012. The May 6, 1987 audiogram revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 0, 0, 10 and 20 for the right ear and 15, 10, 10 and 10 for the left ear. The most recent February 16, 2012 audiogram revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 10, 30, 65 and 80 for the right ear and 15, 30, 25 and 25 for the left ear.

Appellant provided his employment history. He noted that from 1951 to 1955 he worked for the U.S. Air Force and was exposed to noise from diesel generators for eight hours per day. No hearing protection was provided. From 1955 to 1957, appellant worked at the employing establishment as an electrician helper and was exposed to noise from marine machines, motors, grinders, choppers, cranes, diesel engines, pumps and sanders for eight hours a day. No hearing protection was provided. From 1957 to 1987, appellant was also employed as an engineering technician and exposed to noise from hydraulic pumps, submarine water slugs, surface ships and firing guns. Hearing protection was provided. Appellant retired from federal service on May 8, 1987. From 1987 to 1999, he worked as an engineer in the private sector where he

performed primarily office work and ship deck checks. Hearing protection was provided. Appellant submitted various personnel forms and a position description for a mechanical engineering technician.

In an April 30, 2012 letter, the employing establishment provided a noise assessment worksheet which noted that, from February 28, 1951 to May 12, 1958, appellant worked as an electrician and was exposed to continuous noise at the lower frequency range and intermittent noise at the upper frequency. From May 12, 1958 to May 11, 1987, appellant worked as an engineering technician and was exposed to continuous noise at the lower frequency. The employing establishment confirmed that he participated in the hearing conservation program.

In a May 23, 2012 letter, appellant stated that he realized his hearing loss was connected to his employment on January 1, 1987 because he was exposed to hazardous noise while testing onboard ships. He noted that he did not previously file a claim, did not have previous hearing problems and was not involved in any hobbies involving exposure to loud noise.

OWCP prepared a statement of accepted facts (SOAF) describing appellant's noise exposure. It noted that from 1957 to 1987 appellant worked for the employing establishment and was exposed to noise from hydraulic pumps, submarine/shooting water slugs -- surface ships/firing of guns, marine machinery, motor grinders, chippers, cranes, diesel engines, pumps and sanders. Appellant was in the U.S. Air Force from 1951 to 1955 and worked in the private sector from 1987 to 1999, where he was exposed to hazardous noise twice a year, for a week at a time. OWCP forwarded the SOAF to Dr. Randolph and requested that he provide additional information regarding the cause of appellant's hearing loss, based on the background provided in the SOAF.

In a June 28, 2012 addendum, Dr. Randolph noted that the earliest audiogram in appellant's record was dated May 5, 1955 and revealed entirely normal hearing in both ears. He stated that appellant left civil service employment in 1987 and noted that a May 6, 1987 audiogram revealed essentially normal hearing in both ears. Dr. Randolph reported that, after appellant left civil service employment, his hearing degenerated significantly resulting in a ratable hearing loss of 24.375 percent in the right ear and zero percent in the left ear. He diagnosed bilateral sensorineural hearing loss. Dr. Randolph opined that the workplace exposure, as described in the material provided, was of sufficient intensity and duration to have caused and or aggravated hearing loss if inadequate ear protection had been utilized. He noted, however, that when appellant left his civil service employment there was no evidence of hearing loss due to noise exposure. Dr. Randolph concluded that appellant's hearing loss was not due to noise exposure encountered in his federal civilian employment as he had normal hearing at the time he left his federal civil service employment.

In a decision dated July 12, 2012, OWCP denied appellant's hearing loss claim finding that the medical evidence was insufficient to establish that appellant's 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 claim by the weight of the reliable, probative and substantial evidence² including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.³ 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.⁴

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

ANALYSIS

Appellant alleged that he sustained employment-related hearing loss. OWCP accepted that he was exposed to various noises when he worked as an engineering technician for the employing establishment and that he suffered from hearing loss but it denied his claim finding insufficient medical evidence to establish that his bilateral sensorineural hearing loss was causally related to his federal employment. The Board finds that appellant failed to establish that he sustained an employment-related hearing loss.

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

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

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

⁵ *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).

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

⁷ *Patricia J. Bolleter*, 40 ECAB 373 (1988).

Appellant submitted March 21 and June 28, 2012 reports from Dr. Randolph, who reviewed appellant's history, including the statement of accepted facts. Dr. Randolph provided an accurate history of appellant's employment and levels of noise exposure. He noted that appellant retired from civil service in 1987. Dr. Randolph stated that a March 21, 2012 audiogram revealed mild high tone sensorineural hearing loss in his left ear and rapidly sloping high frequency sensorineural hearing loss in the right ear. He diagnosed bilateral sensorineural hearing loss. Dr. Randolph opined that appellant's workplace exposure was of sufficient intensity and duration to have caused and/or aggravated hearing loss if inadequate ear protection had been utilized. He noted, however, that according to a May 6, 1987 audiogram appellant had essentially normal hearing upon his retirement from civil service. Dr. Randolph concluded that the evidence established appellant's hearing loss arose after his federal employment. He concluded that appellant's hearing loss was not due to noise exposure encountered in his federal civilian employment. The Board finds that Dr. Randolph's reports do not support that exposure to noise in his federal employment caused or contributed to appellant's bilateral sensorineural hearing loss.

The record reveals that appellant resigned his federal employment on May 5, 1987. A May 6, 1987 audiogram revealed the following decibel losses at 500, 1,000, 2,000 and 3,000 Hz: 0, 0, 10 and 20 for the right ear and 15, 10, 10 and 10 for the left ear. Thus, the medical evidence of record establishes that appellant had essentially normal hearing at the time of his retirement from civil service employment. The evidence supports Dr. Randolph's conclusion that appellant's hearing loss was not causally related to his federal employment.

There is no other medical evidence supporting that appellant sustained hearing loss due to noise exposure at work. The Board finds that he has not met his burden of proof to establish through probative medical evidence that he sustained a hearing loss in the performance of duty.

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 met his burden of proof to establish that he has an employment-related hearing loss.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 15, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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