

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

R.B., Appellant

and

**DEPARTMENT OF THE ARMY,
INSTALLATION MANAGEMENT
COMMAND, West Point, NY, Employer**

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**Docket No. 12-1667
Issued: June 3, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 31, 2012 appellant filed a timely appeal from the July 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his hearing loss 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 established that he sustained hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On April 10, 2012 appellant, then a 69-year-old boiler operator, filed an occupational disease claim, alleging that his hearing loss was caused by factors of his federal employment

¹ 5 U.S.C. § 8101 *et seq.*

including working around the laundry boilers, turbines and auxiliary machines. He realized that he had developed hearing loss in both ears in the performance of duty. The employing establishment advised that appellant first reported his condition to his supervisor on October 27, 2010.

The employing establishment submitted hearing conservation data that included audiograms dated: July 13, 1976; August 17, 1977; October 5, 1978; May 6, 1981; May 11, 1982; April 24, 1984; April 8, 1985; April 15, 1986; April 15, 1988; May 31 and June 19, 1989; May 11, 1990; April 19, 1991; April 21, 1992; April 16, 1993; June 11, 2003; April 12, 2007; and September 15 and 17, 2010.

By letter dated May 3, 2012, OWCP requested that appellant provide factual information such as his employment history and whether he had continuing noise exposure at work. It also advised him that, if the information was not received within 30 days from the date of the letter, a decision will be made based upon the evidence in file. No response was received.

By decision dated July 2, 2012, OWCP denied appellant's claim on the grounds that he had not submitted evidence that the workplace events and exposures occurred as alleged.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,³ including that he or she is an employee within the meaning of FECA⁴ and that he or she filed his or her claim within the applicable time limitation.⁵ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the

² *Id.* at §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *See M.H.*, 59 ECAB 461 (2008); *see* 5 U.S.C. § 8101(1).

⁵ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁶ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁸

ANALYSIS

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

OWCP denied appellant's claim on the basis that appellant did not respond to an inquiry regarding his employment exposure and, because of this, the evidence was insufficient to establish his alleged exposure. The Board notes that appellant worked in the laundry area in and around the boiler plant. The employing establishment has not contested appellant's exposure to noise. Furthermore, the record reflects that the employing establishment has a hearing loss conservation program and provided multiple years of audiological data for appellant. There is no persuasive evidence which refutes that appellant had noise exposure at work.⁹ The Board finds that appellant has sufficiently established his exposure to noise at work. The claim will be remanded for additional development of the medical evidence to determine whether the employment factors caused the claimed loss of hearing.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰ The Board will remand the case to OWCP for development of the medical evidence. 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 medical opinion regarding whether his hearing loss was causally related to factors of his federal employment.¹¹ Following this, and any other further development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

CONCLUSION

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

⁸ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

⁹ See *Gregory J. Reser*, 57 ECAB 277 (2005) (an employee's statement regarding the occurrence of an employment incident will stand unless refuted by strong or persuasive evidence).

¹⁰ *Horace L. Fuller*, 53 ECAB 775, 777 (2002).

¹¹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995) (provides that, unless the case file already contains a reliable medical report which fully meets OWCP requirements, OWCP will refer the claimant for audiological evaluation and otological examination which addresses the relationship of any hearing loss to the employment and the degree of any permanent impairment).

ORDER

IT IS HEREBY ORDERED THAT the July 2, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action in conformance with this decision.

Issued: June 3, 2013
Washington, DC

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

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

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