

FACTUAL HISTORY

On October 24, 2011 appellant, then a 60-year-old telecommunications specialist, filed an occupational disease claim (Form CA-2) alleging that as a result of noise exposure during the performance of his federal duties he suffered an aggravation of preexisting tinnitus and persistent headaches that interfered with his sleep. He indicated that the aggravation of his medical conditions began shortly after management directed his move on October 5, 2011 to Building 6 where he was exposed to noise. Appellant entered voluntary retirement effective December 31, 2011.

In a November 22, 2011 letter, OWCP requested additional factual and medical evidence. It afforded appellant 30 days to submit additional evidence and respond to its inquiries.

Subsequently, appellant submitted a narrative statement indicating that he wore earplugs in his work environment as of October 6, 2011 and previously filed a claim for hearing loss and tinnitus in 1995 with the Department of Veterans Affairs. He stated that he decided to retire solely to remove himself from the work environment, where the conditions disrupted his sleep and ability to work and concentrate and he deeply regretted having to leave his federal employment.

By letter dated July 30, 2012, OWCP informed appellant that he had not submitted necessary information and gave him 30 days to provide further information and evidence in support of his claim.

In response, appellant submitted a position description and an August 23, 2012 narrative statement, indicating that he believed the source of noise at Building 6 was the network and communications equipment located in the building. He recalled no required safety practices with respect to hearing protection nor any regulations that demanded them. Appellant reiterated that, after the first day he was assigned to Building 6, he wore earplugs as he felt it was the only possible course of action at the time that he could take to protect himself. He also submitted a March 20, 1996 rating decision from the Department of Veterans Affairs regarding his hearing loss and tinnitus.

On December 7, 2012 the employing establishment indicated that appellant was not provided with ear protection as Building 6 was an office environment with an air handler and computers.

By decision dated December 10, 2012, OWCP denied the claim on the basis that appellant failed to establish fact of injury, finding no evidence to suggest that he was exposed to occupational noise levels above 85 decibels during the course of his federal employment.²

² On May 3, 2012 OWCP referred appellant to Dr. Ivan D. Karabachev, a Board-certified otolaryngologist, for a second opinion evaluation. In reports dated June 22 and 25, 2012, Dr. Karabachev opined that appellant suffered from noise-induced bilateral sensorineural hearing loss related to his working conditions. By decision dated December 10, 2012, OWCP noted that it erroneously referred appellant to a second opinion examination with Dr. Karabachev on June 22, 2012 and, thus, his reports were of no probative value.

On December 28, 2012 appellant requested a review of the written record by an OWCP hearing representative and submitted a narrative statement.

By decision dated March 15, 2013, an OWCP hearing representative affirmed the December 10, 2012 decision finding no factor of employment for workplace noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.³

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) 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 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 medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁴

ANALYSIS

The record does not contain an explanation as to how appellant sustained an aggravation of his preexisting tinnitus and persistent headaches. Appellant simply stated that he sustained these conditions due to noise exposure at work. He believed that the source of noise at Building 6 was the network and communications equipment located in the building, but there is no explanation or evidence as to the decibel level. On December 7, 2012 the employing establishment indicated that appellant was not provided with ear protection as Building 6 was an office environment with an air handler and computers. OWCP informed appellant of the deficiencies in his claim, but he did not provide the required documentation prior to OWCP's

³ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ See *Solomon Polen*, 51 ECAB 341 (2000); *J.L.*, Docket No. 11-771 (issued November 17, 2011).

issuance of its March 15, 2013 decision. Accordingly, the Board finds that appellant failed to meet his burden of proof.⁵

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed conditions became apparent during a period of employment, nor his belief that his conditions were caused by his employment is sufficient to establish causal relationship.⁶ Since appellant failed to establish the first component of fact of injury, it is not necessary to discuss whether he submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors alleged.⁷

On appeal, appellant contends that OWCP's decision did not cover the employment factor that caused his medical conditions. OWCP did not accept noise exposure as a factor of his federal employment. For the reasons stated above, appellant failed to establish fact of injury. Thus, the Board finds his claim is not substantiated.

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 sustained an injury in the performance of duty.

⁵ See *Walter D. Morehead*, *supra* note 3; *M.L.*, Docket No. 12-957 (issued December 7, 2012).

⁶ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Bonnie A. Contreras*, 57 ECAB 364, 368 n.10 (2006).

ORDER

IT IS HEREBY ORDERED THAT the March 15, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2013
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

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