

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

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D.M., Appellant )  
and ) Docket No. 13-1798  
U.S. POSTAL SERVICE, POST OFFICE, ) Issued: November 12, 2013  
Washington, DC, Employer )  
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)

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 22, 2013 appellant filed a timely appeal of a January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for compensation. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant sustained a hearing loss, tinnitus or migraine headaches causally related to factors of her federal employment, as alleged.

On appeal, appellant contends that she definitely had a hearing loss and that the decision of OWCP was based on only one doctor's opinion. She questioned the evaluation of the medical evidence and argued that she submitted diagnoses from three doctors who agreed that she suffered hearing loss. Appellant contended that the hearing loss is a direct result from loud music

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<sup>1</sup>5 U.S.C. § 8101 *et seq.*

coming from boom box at her place of employment and that playing the music was a violation of the rules of the employing establishment.

### **FACTUAL HISTORY**

On January 9, 2012 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim alleging that on January 6, 2012, due to continued blasting of music from the radio directed at her work location, she suffered from tinnitus, some hearing loss in the left ear and migraine headaches.

In support of her claim, appellant submitted a January 6, 2012 report by Dr. Cesar A. Torres, a Board-certified family practitioner, who diagnosed tinnitus and high frequency hearing loss. Dr. Torres referred her to Dr. Mary E. Gorman, a Board-certified otolaryngologist, for an evaluation.

By letter dated January 12, 2012, OWCP informed appellant that the evidence was insufficient and listed the additional items necessary to prove her claim.

In a January 12, 2012 report, Dr. Gorman diagnosed otalgia, headache, noise-induced hearing loss, tinnitus and temporamandibular joint disorder. She also treated appellant on January 18, 2012 for a headache.

Appellant submitted an undated statement indicating that she has complained about the blasting of the radio to her supervisor, but that the supervisor told her that there was nothing wrong with a little music. She contended that the radio problem has created a hostile environment and animosity towards her.

On April 13, 2012 OWCP referred appellant to Dr. Stephen Bane, a Board-certified otolaryngologist, for a second opinion. In an April 30, 2012 report, Dr. Bane reported normal findings on physical and audiometric examination. He diagnosed appellant with normal hearing with tinnitus. In response to specific questions posed, Dr. Bane opined that her exposure to noise at work did not cause hearing loss. He indicated that appellant's hearing was essentially normal, and stated, "Even so, noise from a boom box would not be deemed sufficient to have caused hearing loss if she had any." Dr. Bane also noted that her hearing loss was not in excess of what would normally be due to presbycusis.

In a June 18, 2012 decision, OWCP denied appellant's claim as she had not established a causal relationship between the accepted factor of her federal employment and the diagnosed condition.

On July 10, 2012 appellant requested an oral hearing before an OWCP hearing representative. At the hearing held on November 13, 2012, she testified that the loud music got worse in April to May 2011 when a new manager allowed the music. Appellant indicated that there is still music directed towards her area from the boom box and that she is exposed to the music two hours a day five days a week. She noted that she complained repeatedly about the music but nothing was done. Appellant alleged that the music from the boom box gave her headaches and hearing loss.

By decision dated January 25, 2013, OWCP’s hearing representative affirmed the denial of appellant’s claim as she failed to provide medical evidence that established that her injury was causally related to the accepted factor of employment.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> including that he or she is an “employee” within the meaning of FECA<sup>4</sup> and that he or she filed his or her claim within the applicable time limitation.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</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>8</sup>

Causal relationship is a medical issue<sup>9</sup> and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,<sup>10</sup> must be one of reasonable medical

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<sup>2</sup>*Id.* at §§ 8101-8193.

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

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

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

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

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

<sup>8</sup>See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>9</sup>*Mary J. Briggs*, 37 ECAB 578 (1986).

<sup>10</sup>*William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

certainty,<sup>11</sup>and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>12</sup>

## **ANALYSIS**

Appellant alleged that she suffered from hearing loss, tinnitus and migraine headaches as a result of being exposed to loud music coming from a boom box that was aimed in the direction of her work space for two hours a day five days a week. Althoughshe filed a claim for a traumatic injury, the Board notes that she is actually alleging an occupational disease. A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift.<sup>13</sup> As appellant alleged injury as a result of being exposed to loud noise over a period of time, her claim is properly treated as an occupational disease claim.

The Board finds that appellant did not meet her burden of proof to establish that she sustained hearing loss, tinnitus or migraine headaches causally related to the accepted factors of her federal employment. It is not disputed that appellant was exposed to music from a boom box during the course of her employment. However, appellant's claim was denied as she failed to establish that she sustained a diagnosed medical condition causally related to this exposure.

In order to determine the extent and degree of any employment-related hearing loss, OWCP referred appellant to Dr. Bane, for a second opinion examination. Dr. Bane diagnosed appellant with normal hearing with tinnitus. After reporting his normal findings on physical and audiometric examination, he indicated that, although her hearing was essentially normal, noise from a boom box would not be deemed sufficient to have caused hearing loss if she had any. Dr. Bane noted that any hearing loss could be attributable to presbycusis.

Dr. Torreshad diagnosed tinnitus and high frequency hearing loss and referred appellant to Dr. Gorman, who noted that she showed signs of noise-induced hearing loss in her most recent audiogramJanuary 9, 2012, which was very likely the result of continuous exposure to loud noise. He also treated appellant for a headache. However,neither Dr. Torres nor Dr. Gorman provided an opinion as to whether appellant's exposure to loud music during her federal employment caused her hearing loss, tinnitus or headaches. Dr. Gorman's statement that appellant's hearing loss was likely the result of continuous exposure to loud noise does not infer that appellant's exposure to music two hours a day at work was the cause of her medical conditions.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was caused by her employment is sufficient to

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<sup>11</sup>See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

<sup>12</sup>See *William E. Enright*, 31 ECAB 426, 430 (1980).

<sup>13</sup> 20 C.F.R. § 10.5(ee), (q); *B.B.*, Docket No. 13-256 (issued August 13, 2013).

establish causal relationship.<sup>14</sup> As she did not submit a rationalized medical opinion establishing a causal relationship between her accepted employment activities and a diagnosed medical condition, she failed to meet her burden of proof.

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 failed to establish that she sustained a hearing loss, tinnitus or migraine headaches causally related to factors of her federal employment, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated January 25, 2013 is affirmed.

Issued: November 12, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup>*Walter D. Morehead*, 31 ECAB 188 (1986).