United States Department of Labor
Employees' Compensation Appeals Board

J.B., Appellant	)	
	)	**Docket No. 13-976**
and	)	**Issued: September 5, 2013**
DEPARTMENT OF THE ARMY,	)	
Fort Leonard Wood, MO, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 18, 2013 appellant filed a timely appeal from a February 12, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her hearing loss claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award case.

ISSUE

The issue is whether appellant has established that she sustained an employment-related hearing loss in the performance of duty, causally related to factors of her federal employment.

On appeal, appellant contends that her hearing loss was causally related to workplace noise exposure. She further contends that a hearing test performed during a routine allergy appointment with an ear nose and throat physician was abnormal. Amplification, such as hearing aids was recommended.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On August 15, 2012 appellant, then a 50-year-old nurse, filed an occupational disease claim alleging that on July 20, 2012 she first became aware of her hearing loss. She further alleged that on July 23, 2012 she first realized that her condition was caused by extreme loud building alarms over the public announcement system that took place during the past several months at work. Appellant stated that a hearing test revealed significant hearing loss towards high pitches. She possibly required hearing aids.

In an August 16, 2012 letter, the employing establishment controverted appellant's claim, contending that there was no medical evidence establishing that her hearing loss was employment related. In e-mails dated August 15, 2012, it addressed her noise exposure and claimed hearing loss. The alarms referenced by appellant were mass notification alarms. They were tested once a month for possibly 10 minutes. The test involved a siren followed by a verbal alarm. Initial testing showed that the alarm was a maximum of 112 decibels (dBA). The overall time weighted average was so small that it was not even discussed. The alarm was also tested at 78 to 84 dBA depending on the distance. The regular 24-hour-a-day noise was 40 to 45 dBA, which was not hazardous noise. The only audiogram on file for appellant was performed during a preemployment physical examination. Appellant had not been seen since that time and, thus, it could neither confirm nor deny a change in her hearing. She was not enrolled in a hearing program because she should not have been exposed to hazardous noise at work. The alarms in the hospital were probably loud enough to cause hearing loss, but the length of time the alarms were active was unlikely to be long enough to cause any damage.

The employing establishment submitted an August 5, 2012 report regarding the results of sound level testing performed on May 14, 2012 in the primary care unit and again for adjustment on July 16, 2012 in its primary care clinic during a mass notification alarm. It was determined that at no time any persons were exposed to a level of noise under the guidance of the employing establishment or Occupational Safety and Health Administration (OSHA) requiring any medical monitoring or hearing conservation programs.

The employing establishment submitted appellant's baseline audiogram obtained on May 7, 2009. Audiometric testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of the right ear as 0, -5, 5 and 15, respectively. Testing of the left ear at the same frequency levels noted above revealed decibel losses of 0, -5, 15 and 5, respectively.

Appellant submitted an audiogram performed by Dr. Shari Norval, an audiologist, on July 23, 2012 who advised that appellant had mild-to-moderate high frequency sensorineural hearing loss.

An unsigned progress note dated July 23, 2012 contained the typed name of Eddie L. Kirsch, a physician's assistant. The report noted appellant's complaints of allergy symptoms and listed findings on physical examination. Appellant had allergic rhinitis. The report noted that her family stated that she could not hear them.

By letter dated October 16, 2012, requested that the employing establishment address the period of appellant's noise exposure before the decibel level was lowered and the once a month

alarms. It advised her that the evidence submitted was insufficient to establish her claim and requested that she submit factual and medical evidence.

On October 21, 2012 appellant stated that on approximately July 23, 2012 she noticed difficulty with hearing patients on the telephone. She did not put things together until her family stated something about her hearing. Appellant first related her condition to her employment after the July 23, 2012 audiogram results. A May 7, 2009 audiogram which was performed as part of her new employee examination was normal. Appellant claimed that exposure to loud alarms caused excruciating pain in her ears. The alarms were still loud even when she held her hands over her ears and went outside. Appellant noted a history of a childhood ear infection and occasional listening to loud music. She was uncertain as to the date of her last exposure to the alarms at work, noting that she currently worked in a clinic as a nurse at Whitman Air Force Base. Appellant provided a history of her exposure to noise and fluorescent lights at work from the 1980s to August 15, 2012.

In an October 29, 2012 e-mail, the employing establishment stated that appellant was initially exposed to noise levels in October 2011 when she moved to a new clinic. The dBA level was not changed until July 2012. The alarms occurred once a month and lasted five minutes with intermittent interruption by voice instructions.

In a December 10, 2012 e-mail, an employing establishment industrial hygienist stated that the ambient noise level in the primary care unit ranged from 43 to 57 dBA. An alarm noise level varied from approximately 93 to 110 dBA based on an individual's proximity to the alarm horn and location in the primary care unit. The noise level was changed to around 80 dBA. The alarm occurred for 10 to 15 seconds and then there was an announcement. It repeated for 10 to 15 seconds. No area was found above 110 dBA. Under OSHA rules, there was no hazardous noise unless appellant was exposed for over 30 minutes. Alarm testing only occurred once a month, not 8 hours a day, 40 hours a week or 30 minutes daily at 110 dBA. The normal background noise for the entire work month was less than 60 dBA. Otherwise it was brief, 10 to 15 minutes.

By letter dated December 19, 2012, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Jay A. Dunfield, a Board-certified otolaryngologist, to determine whether she had any permanent impairment due to her federal employment, entitling her to a schedule award.

In a January 9, 2013 medical report, Dr. Dunfield set forth normal findings on examination and diagnosed mild sensorineural hearing loss. He advised that the diagnosed condition was not due to noise exposure in appellant's federal employment. Dr. Dunfield explained that her condition was consistent with her age. He opined that, based on the information presented, appellant's noise exposure in her federal employment was not sufficient to cause significant hearing loss. An audiometric test was conducted on the same day as Dr. Dunfield's examination. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of the right ear as 10, 15, 20 and 15, respectively. Testing at the same frequency levels noted above revealed decibel losses of 10, 10, 25 and 20, respectively, regarding the left ear.

On January 23, 2013 a medical adviser reviewed Dr. Dunfield's report. He noted Dr. Dunfield's finding that appellant did not have hearing loss due to noise exposure in her civilian federal employment. The medical adviser stated that he could not accept a noise-induced hearing loss. He concluded that a Form CA-51 could not be prepared under such circumstances.

In a February 12, 2013 decision, OWCP accepted that appellant had filed a timely claim and that she had been exposed to noise during her federal employment. It, however, denied her claim on the grounds that the medical evidence did not establish that her hearing loss was causally related to the established work-related noise exposure. OWCP stated that medical treatment was not authorized and prior authorization, if any, was terminated.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[3] 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.[4]

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 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 a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[5] Neither the fact that appellant's condition became apparent during a period of employment nor, his or her belief that the condition was caused by his or her employment is sufficient to establish a causal relationship.[6]

[2] *Id.*

[3] *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, supra* note 4 at 351-52.

[6] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

ANALYSIS

It is not disputed that appellant was exposed to work-related noise alarms while working as a nurse at the employing establishment. The Board finds that the medical evidence of record does not establish that her hearing loss is causally related to the accepted employment-related noise exposure.

OWCP referred appellant to Dr. Dunfield for a second opinion evaluation regarding the extent and degree of any employment-related hearing loss. On January 9, 2013 Dr. Dunfield examined her and reviewed the medical record. He provided normal examination findings and diagnosed mild sensorineural hearing loss. Dr. Dunfield explained that appellant's hearing loss was consistent with her age. He further explained that the duration of her noise exposure "would not be sufficient to cause significant [hearing] loss." Based upon the information presented, Dr. Dunfield opined that appellant's hearing loss was not due to noise exposure during her federal employment. His opinion is supported by the opinion of the medical adviser, who reviewed the medical evidence of record and opined that appellant did not have noise-induced hearing loss.

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. Dunfield examined appellant, reviewed audiological records and provided a reasoned opinion explaining why the hearing loss was not due to the established employment factor. The employing establishment's May 7, 2009 audiogram was normal. This evidence is insufficient to meet appellant's burden of proof as it did not find hearing loss due to the established employment-related noise exposure. There is no other medical evidence supporting that her hearing loss is employment related. Thus, appellant has not met her burden of proof to establish that her hearing loss is causally related to employment factors.

The July 23, 2012 audiogram from Dr. Norval, an audiologist, found that appellant had mild-to-moderate high frequency sensorineural hearing loss. This audiogram is of no probative value as it was not certified as accurate by a physician.[7]

The unsigned progress note dated July 23, 2012, which contained the typed name of Mr. Kirsch, a physician's assistant, has no probative medical value in establishing appellant's schedule award claim. A physician's assistant is not considered to be a physician as defined under FECA.[8]

[7] *T.B.*, Docket No. 09-1504 (issued April 12, 2010). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician); 5 U.S.C § 8101(2). *See also Robert E. Cullison*, 55 ECAB 570 (2004) (does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist). *See also James A. England*, 47 ECAB 115 (1995) (finding that an audiogram not certified by a physician as being accurate has no probative value; need not review uncertified audiograms). *See also Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss).

[8] *Roy L. Humphrey*, 57 ECAB 238, 242 (2005); 5 U.S.C. § 8101(2).

On appeal, appellant contended that her hearing loss was causally related to workplace noise exposure and that she required amplification such as, hearing aids. As stated, the weight of the medical evidence did not establish that her hearing loss was causally related to her accepted employment-related noise exposure. The Board finds, therefore, that appellant is not entitled to a schedule award or to hearing aids.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has failed to establish that she has an employment-related hearing loss, causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 5, 2013
Washington, DC

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

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

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