

the case of *David L. Kiser*² to deny compensation benefits because he provided much stronger causal evidence than the employee in that case.

FACTUAL HISTORY

On September 18, 2012 appellant, then a 69-year-old heavy equipment operator, filed an occupational disease claim (Form CA-2) alleging hearing loss due to noise exposure in the course of his federal employment. He first became aware of his condition on January 1, 2002 and realized it was caused or aggravated by his employment on September 11, 2012 when he reviewed a report from Dr. Uday Dave, a Board-certified otolaryngologist.

In an October 2, 2012 letter, OWCP informed appellant of the deficiencies of his claim. It affords him 30 days to submit additional evidence and respond to its inquiries.

Appellant submitted an official employment history and a narrative statement. He worked at the employing establishment for approximately three years from 1977 to 1980. Appellant's duties included operating a dozer, scraper, pan and a hoist. He was exposed to loud noises on a daily basis that were produced by the heavy equipment, all of which were diesel-powered. Appellant indicated that he occasionally wore earplugs and worked eight hours a day, five days a week. He also submitted a medical examination dated September 22, 1977 indicating that he had high frequency hearing loss and was cleared to work for the employing establishment.

In an August 27, 2012 report, Dr. Dave diagnosed bilateral sensorineural hearing loss and indicated that appellant had worked for the employing establishment for five years during which he had a constant tinnitus in his ears like buzzing and bells. He also submitted the results of an August 27, 2012 audiometric evaluation.

On December 3, 2012 the employing establishment controverted the claim and indicated that appellant's industrial audiograms documented that no hearing loss occurred during his federal employment. It submitted his industrial audiograms dated September 22, 1977 to October 2, 1980.

On December 6, 2012 Dr. Eric Puestow, an OWCP medical adviser, reviewed appellant's audiograms and opined that, during the period of his employment, appellant's hearing improved in the left ear at the frequencies of 500 and 1,000 and was unchanged at the other tested frequencies. In the right ear, appellant's hearing improved at the frequencies of 1,000, 2,000, 4,000 and 6,000 and was unchanged at the other frequencies. Dr. Puestow concluded that there was no progression in appellant's hearing loss during his federal employment.

By decision dated December 10, 2012, OWCP denied the claim. It found that the medical evidence submitted was not sufficient to establish fact of injury.

On December 18, 2012 appellant, through his attorney, requested an oral hearing before an OWCP hearing representative. In a February 28, 2013 report, Dr. William A. Logan, a

² Docket No. 03-613 (issued August 21, 2003).

Board-certified otolaryngologist, diagnosed bilateral sensorineural hearing loss. He opined that the pattern of appellant's hearing loss was consistent with hearing loss due to loud noise exposure and was typical of an accumulative effect of repeated exposure to noise.

A telephonic hearing was held on April 10, 2012 before an OWCP hearing representative.

By decision dated June 12, 2013, OWCP's hearing representative affirmed the December 10, 2012 decision. He found that appellant failed to submit sufficient medical evidence to establish that his hearing loss was causally related to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 timely filed within the applicable time limitation period of FECA and that an injury⁴ was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit 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.⁶

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

³ *Supra* note 1.

⁴ OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

⁵ *See J.C.*, Docket No. 09-1630 (issued April 14, 2010). *See also Ellen L. Noble*, 55 ECAB 530 (2004).

⁶ *Id.* *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁷ *See I.J.*, 59 ECAB 408 (2008). *See also Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS

It is not disputed that appellant was exposed to employment-related noise during the course of his federal employment. The Board finds, however, that the medical evidence does not establish that his hearing loss is causally related to accepted employment-related noise exposure.⁸

On December 6, 2012 Dr. Puestow, an OWCP medical adviser, reviewed audiological records and opined that there was no progression in appellant's hearing loss during his federal employment. He explained that, during the period of appellant's employment, his hearing improved in the left ear at the frequencies of 500 and 1,000 and was unchanged at the other tested frequencies. In the right ear, appellant's hearing improved at the frequencies of 1,000, 2,000, 4,000 and 6,000 and was unchanged at the other frequencies. Dr. Puestow did not support that appellant sustained hearing loss due to exposure to noise in the workplace.⁹

Appellant submitted a preemployment medical examination dated September 22, 1977 indicating that he had high frequency hearing loss and was cleared to work for the employing establishment. The Board notes that he had hearing loss prior to his federal employment. This evidence does not support that appellant's hearing loss was contributed to by his exposure to noise from 1977 to 1980.

Appellant also submitted an August 27, 2012 report from Dr. Dave, who diagnosed bilateral sensorineural hearing loss. Dr. Dave noted that appellant had worked for the employing establishment for five years during which he had a constant tinnitus in his ears. In a February 28, 2013 report, Dr. Logan diagnosed bilateral sensorineural hearing loss and opined that the pattern of appellant's hearing loss was consistent with hearing loss that was due to loud noise exposure and typical of an accumulative effect of repeated exposures to noise. Drs. Dave and Logan failed to provide a rationalized medical opinion explaining how appellant's federal employment, noise exposure, caused or aggravated his hearing loss. The Board has held that the mere fact that appellant's symptoms arise during a period of employment or produce symptoms revelatory of an underlying condition does not establish a causal relationship between his condition and his employment factors.¹⁰ Lacking thorough medical rationale on the issue of causal relationship, the reports from Drs. Dave and Logan are insufficient to establish that appellant sustained an employment-related hearing loss.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹¹ Causal relationship must be established by

⁸ See *R.B.*, Docket No. 13-1858 (issued January 23, 2014).

⁹ See *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹⁰ See *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

rationalized medical opinion evidence and appellant failed to submit such evidence. As appellant has not submitted any medical evidence to support his allegation that he sustained an injury causally related to the indicated employment factors, he failed to meet his burden of proof to establish a claim.

On appeal, appellant's attorney contends that the evidence of record is sufficient to establish that appellant sustained an employment-related hearing loss. OWCP should not have relied on the case of *Kiser*¹² to deny appellant compensation benefits because he provided much stronger causal evidence than the employee in that case. In *Kiser*,¹³ the employee was exposed to workplace noise and had evidence of hearing loss, however, he had prefederal employment hearing loss noted in 1968 and his subsequent hearing loss was related to presbycusis, not due to his federal noise exposure. The Board found that the employee did not provide any evidence to establish that his federal noise exposure was causally related to his hearing loss. In the instant case, appellant was exposed to workplace noise and had evidence of hearing loss; however, he had prefederal employment hearing loss noted in a September 22, 1977 medical examination. The Board finds that he failed to provide sufficient medical evidence to establish that his federal noise exposure contributed to his hearing loss. OWCP properly relied upon the *Kiser* case to support its denial of compensation.

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 employment-related hearing loss in the performance of duty, causally related to factors of his federal employment.

¹² *Supra* note 2.

¹³ *Id.*

ORDER

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

Issued: April 10, 2014
Washington, DC

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

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

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