

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

D.B., Appellant)	
)	
and)	Docket No. 13-1988
)	Issued: April 18, 2014
TENNESSEE VALLEY AUTHORITY,)	
NUCLEAR POWER, Chattanooga, TN,)	
Employer)	

Appearances: *Case Submitted on the Record*
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 28, 2013 appellant filed a timely appeal from a May 29, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease 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 met his burden of proof to establish that he sustained hearing loss in the performance of duty.

FACTUAL HISTORY

On February 4, 2013 appellant, then a 68-year-old former pipefitter, filed an occupational disease claim (Form CA-2) alleging bilateral hearing loss as a result of employment-related noise

¹ 5 U.S.C. § 8101 *et seq.*

exposure in his work at the employing establishment. He stated that he first became aware of his condition and of its relationship to his employment on January 23, 2013. Appellant notified his supervisor on February 7, 2013. The employing establishment reported that he was last exposed to the alleged noise exposure on June 13, 1983.

By letter dated February 11, 2013, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. OWCP also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, whether he wore ear protection and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms.

Appellant submitted an unsigned audiometry examination dated January 23, 2013. It revealed the following decibel (dBA) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 15, 25, 20 and 35 for the right ear and 40, 45, 35 and 30 for the left ear. Auditory discrimination scores revealed 88 percent for the right and 88 percent for the left.

In a February 18, 2013 narrative statement, appellant responded to OWCP's questionnaire regarding his hearing loss. He noted that he was a convenience store owner from 1969 to 1975 and was not exposed to noise during this employment. Appellant worked for the employing establishment as a pipefitter from 1975 to 1982. He stated that his employment exposed him to loud noise for 8 to 10 hours a day, 5 to 7 days a week. Safety devices were not used and appellant was not provided hearing protection. He stated that he was not in the military service, had no prior ear or hearing problems and was not involved in any hobbies which exposed him to loud noises. Appellant first noticed his hearing loss on January 23, 2013 when he began experiencing hearing problems, ringing in the ears and speaking in loud tones.

By letter dated March 1, 2013, the employing establishment controverted the claim stating that it was untimely filed. It reported that appellant worked as an employee until June 13, 1983, the date he was last exposed to the alleged factors he attributes to his hearing loss. The employing establishment noted that he became aware of his hearing loss 30 years after his last exposure and would have known about it soon after leaving the employing establishment in 1983. It stated that only one audiogram was obtained during appellant's employment in 1979. Because a second audiogram was not performed during his employment, no comparison could be made and evidence does not exist of injury.

The employing establishment noted that appellant worked as a steamfitter at Bellefonte Construction Site from June 4, 1979 through June 13, 1983. The majority of the work (6 to 7 hours per day, 5 days per week) was done in areas of the plant without any exposure to noise. Some work (1 to 2 hours per day, 5 days per week) may have been around turbines, pressurizers and grinders where noise level surveys indicated readings of 86 to 90 dBA. Since 1973, hearing protection had been provided and was mandatory in the areas worked by appellant. An official employment history was provided noting his employment for 3.23 years.

The employing establishment also provided appellant's June 1, 1979 audiogram and hearing conservation data. The audiogram revealed the following dBA losses at 500, 1,000, 2,000 and 3,000 Hz: 15, 10, 10 and 15 for the right ear and 15, 20, 20 and 15 for the left ear.

By decision dated May 29, 2013, OWCP denied appellant's claim. It found that he filed a timely claim but failed to submit sufficient medical evidence because only one audiogram was received from his employment at the employing establishment. Appellant also failed to provide an accurate work history, noting that his employment history was unclear after his departure from the employing establishment.

LEGAL PRECEDENT

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.² Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.³

Appellant has the burden of establishing by weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁴ Neither the condition becoming apparent during a period of employment nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.⁵

FECA's schedule award provision and its implementing regulations⁶ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss of or loss of use of scheduled members or functions of the body. An employee is entitled to a maximum award of 52 weeks of compensation for complete loss of hearing of one ear and 200 weeks of compensation for complete loss of hearing of both ears.⁷ However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent*

² See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁵ See *John W. Butler*, 39 ECAB 852, 858 (1988).

⁶ 20 C.F.R. § 10.404.

⁷ 5 U.S.C. § 8107(c)(13).

Impairment (A.M.A., *Guides*) has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁸

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000 and 3,000 Hz, the losses at each frequency are added up and averaged. Then, the fence of 25 dBA is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBA result in no impairment in the ability to hear everyday speech under everyday conditions. The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss. Binaural loss is determined by first calculating the loss in each ear using the formula for monaural loss: the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.⁹ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹⁰

ANALYSIS

In its May 29, 2013 decision, OWCP found that the evidence of record failed to support the claimed noise exposure at work. The factual evidence, however, establishes appellant's occupational exposure to noise while performing his duties as a pipefitter. The record reflects that he worked as a pipefitter/steamfitter from June 4, 1979 through June 13, 1983 at Bellefonte Construction Site. Appellant stated that he was exposed to hazardous noise for 8 to 10 hours a day, 5 to 7 days a week. The employing establishment stated that the majority of the work (6 to 7 hours per day, 5 days per week) was done in areas of the plant without any exposure to noise. Some work (1 to 2 hours per day, 5 days per week) may have been around turbines, pressurizers and grinders where noise level surveys showed readings of 86 to 90 dBA. The Board finds that appellant has not submitted sufficient evidence to *prima facie* establish that he sustained hearing loss causally related to noise exposure in his federal employment.¹¹

Appellant submitted an unsigned audiometric report dated January 23, 2013. This report did not address the reliability of the audiometric evaluation and was not accompanied by an otologic examination report, which discussed the cause of his hearing loss. The Board has recognized OWCP requirements regarding audiometric and otologic examination.¹² OWCP requires that the employee undergo both audiometric and otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology and that the audiometric and otologic examination be

⁸ 20 C.F.R. § 10.404. See also *Mark A. Holloway*, 55 ECAB 321, 325 (2004).

⁹ A.M.A., *Guides* (6th ed. 2009).

¹⁰ *J.H.*, Docket No. 08-2432 (issued June 15, 2009); *J.B.*, Docket No. 08-1735 (issued January 27, 2009); *E.S.*, 59 ECAB 249 (2007).

¹¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(c) (February 2013).

¹² See *J.H.*, 59 ECAB 377 (2008).

performed by different individuals as a method of evaluating the reliability of the findings. OWCP's procedures require that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association and that audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report must include: date and hour of examination; date and hour of employee's last exposure to loud noise; a rationalized medical opinion regarding the relationship of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.¹³

The unsigned audiometric report of record lacks the indicia necessary to establish a proper calibration protocol or to meet the standards for audiometric and otologic evaluation. Furthermore, the Board notes that appellant did not respond to OWCP's request for a full employment history, without such appellant has not established causal relationship.

The Board finds that appellant was exposed to occupational noise during his employment at the employing establishment from 1979 to 1983; but he did not meet his burden of proof to establish that he sustained a hearing causally related to his employment.¹⁴

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 established that he sustained hearing loss in the performance of duty.

¹³ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

¹⁴ *Bobby R. Sadler*, Docket No. 05-1327 (issued September 23, 2005).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 18, 2014
Washington, DC

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

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

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