



## FACTUAL HISTORY

On March 13, 2013 appellant, a 60-year-old police officer, filed an occupational disease claim (Form CA-2) alleging bilateral hearing loss caused by factors of his federal employment. He worked at the employing establishment since 1990 and was exposed to noise from needle guns, grinders, trucks and other sources. Appellant underwent training with machine guns and hand guns on an annual basis. He was exposed to noise generated from industrial areas without hearing protection. Prior to his federal employment, appellant served as an infantryman with the United States Marine Corps from 1975 to 1979, where he was exposed to noise generated from gunfire and grenades. From 1980 to 1990 he worked as a police officer in the private sector, where he was exposed to noise generated from trades working. Appellant submitted results of audiograms dated 1975 through February 2013.

In a February 26, 2013 report, Dr. Gerald Randolph, a Board-certified otolaryngologist, evaluated appellant for bilateral, sensorineural hearing loss. An audiogram dated February 20, 2013, with an attached calibration certificate, showed hearing levels of 10, 5, 10 and 5 decibels (dB) on the left and 55, 55, 60 and 60 dB on the right at 500, 1000, 2000 and 3000 hertz (Hz), respectively. Based on the audiogram results, appellant had a ratable hearing loss of 0 percent in the left ear and 48.75 percent in the right ear pursuant to the American Medical Association's, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (sixth edition). Dr. Randolph stated that the mild high tone in appellant's left ear had an audiometric configuration compatible with hearing loss due to a combination of age and past noise exposure. With regard to the right ear, he opined that appellant had progressive hearing loss, with an audiometric configuration compatible with hearing loss significantly aggravated by noise exposure. Dr. Randolph recommended hearing aids for the right ear.

In a June 6, 2013 report, Dr. Randolph stated that appellant underwent an audiogram on April 31, 1975 which showed essentially normal hearing in both ears. An audiogram dated May 15, 1990 noted that appellant had a high tone sensorineural hearing loss in his right ear, which involved the upper portion of the speech frequencies. Dr. Randolph stated that the audiogram showed a zero percent binaural hearing loss under the A.M.A., *Guides*. When he examined appellant on February 20, 2013, an audiometric testing showed a mild high tone sensorineural hearing loss in his left ear which was no greater than that would be expected on the basis of presbycusis. With regard to the right ear, Dr. Randolph reiterated that there was a progressive hearing loss which resulted in a relatively flat hearing loss at 60 dB. The hearing loss did not have an audiometric configuration compatible with hearing loss due to noise exposure. He was not able to identify the cause of the right-sided hearing loss. Dr. Randolph advised that appellant's workplace exposure, as described in the statement of accepted facts, would have been of significant intensity and duration to have aggravated his hearing loss if ear protection had been inadequately utilized.

Dr. Randolph concluded that appellant's left-sided hearing loss was not severe enough to require a hearing aid. While audiometric testing indicated a right-sided 48.75 percent hearing loss and was progressing rapidly, this was not attributable to industrial noise exposure. Dr. Randolph recommended a hearing aid evaluation in the absence of acoustic neuroma. He recommended that appellant be further evaluated by an appropriate otolaryngologist to rule out an acoustic neuroma.

By decision dated June 21, 2013, OWCP denied appellant's claim for a bilateral, sensorineural hearing loss. It found that the medical evidence did not relate his hearing loss to the accepted occupational noise exposure. OWCP stated that Dr. Randolph recommended hearing aids for the nonwork-related hearing loss in appellant's right ear and he did not require the use of a hearing aid in his left ear.

### **LEGAL PRECEDENT -- ISSUE 1**

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 and that he or she filed his or her claim within the applicable time limitation.<sup>4</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>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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.<sup>6</sup>

OWCP's procedures set forth requirements for the type of medical evidence used in evaluation of hearing loss. These include 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; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.<sup>7</sup> The

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<sup>2</sup> 5 U.S.C. §§ 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); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 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> *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

physician should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.<sup>8</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not established that he sustained a binaural hearing loss causally related to his federal employment noise exposure.

The issue is whether appellant's hearing loss was caused or aggravated by exposure to noise while working for the employing establishment. The record reflects that he was exposed to noise in 1975. Dr. Randolph noted that a May 15, 1990 audiogram showed a high tone sensorineural hearing loss in appellant's right ear, which involved the upper portion of the speech frequencies, with a zero percent binaural hearing loss under the A.M.A., *Guides*. The February 20, 2013 audiogram showed a 48.75 percent hearing loss in the right ear and was progressing rapidly; he opined, however, that it was not attributable to industrial noise exposure. The audiogram of February 20, 2013 showed levels of 55, 55, 60 and 60 dBs in the right ear at 500, 1000, 2000 and 3000 Hz. This totaled to 230, which, when divided by 4, obtains an average hearing loss at those cycles of 57.50 decibels. The average of 57.50 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 32.50 decibels, which when multiplied by the established factor of 1.5 equals a 48.75 percent hearing loss in the right ear. Dr. Randolph stated that the hearing loss resulted in a relatively flat hearing loss at 60 decibels and did not present an audiometric configuration compatible with hearing loss due to noise exposure. He was not able to identify the cause of the right-sided hearing loss. Dr. Randolph found that the hearing loss in appellant's right ear was not causally related to his industrial exposure.

Regarding appellant's ear, the audiogram dated February 20, 2013, showed hearing levels of 10, 5, 10 and 5 dB.<sup>9</sup> Dr. Randolph explained that this represented a mild high tone sensorineural hearing loss which was no greater than that would be expected on the basis of presbycusis. The evidence of record therefore does not support that appellant sustained hearing loss causally related to his federal employment.

Appellant submitted results from audiometric testing performed August 1975 to December 2012; but the audiograms are insufficient to establish his hearing loss as causally related to his federal employment as they do not comply with the requirements set forth by OWCP. These tests lack speech testing and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how his employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence as it does not constitute probative medical opinion evidence and is insufficient to meet his burden of

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<sup>8</sup> *Luis M. Villanueva*, 54 ECAB 666 (2003); see Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995).

<sup>9</sup> The dB losses of 10, 5, 10 and 5 of the left ear total 30 decibels. When divided by 4 this sum equals an average of 7.5 decibels. After the fence of 25 decibels is subtracted, the average loss is less than the fence and therefore results in a zero percent loss of hearing of the left ear.

proof.<sup>10</sup> Dr. Randolph provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. The Board finds that Dr. Randolph's report represents the weight of the evidence.

On appeal, appellant contends that he sustained a hearing loss causally related to noise exposure in his federal employment. The Board finds that the weight of medical opinion of record is that of Dr. Randolph. OWCP properly used the audiometric test performed on February 20, 2013 for determining appellant's impairment and eligibility for a schedule award. It was the only test of record performed within the past two years that was certified by a physician.<sup>11</sup> As noted above, it is appellant's burden to submit medical evidence to support the issue of causal relationship.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduces the degree or the period of any disability or aid in lessening the amount of any monthly compensation.<sup>13</sup> OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.<sup>14</sup>

### **ANALYSIS -- ISSUE 2**

The Board further finds that the medical evidence of record does not support that appellant is entitled to hearing aids. Dr. Randolph found that appellant only required a hearing aid for the right ear, but also determined that his right ear hearing loss was not causally related to his federal employment. As he did not establish a compensable hearing loss due to his federal noise exposure, the Board finds that OWCP did not abuse its discretion under section 8103(a) by denying authorization for hearing aids.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his sensorineural hearing loss was causally related to his federal employment. The Board also finds that OWCP did not abuse its discretion in denying authorization for hearing aids.

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<sup>10</sup> *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

<sup>11</sup> *See H.S.*, 58 ECAB 690 (2007); *John C. Messick*, 25 ECAB 333 (1974).

<sup>12</sup> *See Holmes*, *supra* note 10.

<sup>13</sup> 5 U.S.C. § 8103.

<sup>14</sup> OWCP has broad discretionary authority in the administration of FECA and must exercise its discretion to achieve the objectives of section 8103. *Marjorie S. Greer*, 39 ECAB 1099 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 21, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 19, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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