

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

F.H., Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, GA, Employer**

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**Docket No. 14-268
Issued: July 2, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2013 appellant filed a timely appeal from an October 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his hearing loss 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 established that he sustained a hearing loss in the performance of duty.

FACTUAL HISTORY

On March 25, 2013 appellant, then a 60-year-old aircraft mechanic, filed an occupational disease claim alleging that on March 6, 2013 he first became aware of his hearing loss and

¹ 5 U.S.C. § 8101 *et seq.*

realized that it was caused by hazardous noise at work.² He submitted a description of his aircraft mechanic position.

By letter dated April 10, 2013, OWCP requested that the employing establishment address appellant's workplace noise exposure. It advised him that the evidence submitted was insufficient to establish his claim and requested that he submit factual and medical evidence.

In an April 19, 2013 letter, the employing establishment challenged appellant's claim based on an accompanying memorandum and audiometric history from Dr. Captain Erin E. Artz, flight commander in the employing establishment's audiology department. In a memorandum of the same date, Dr. Artz reviewed appellant's audiological records and noted that he began work at the employing establishment in September 1993 as an aircraft mechanic. His first hearing test on September 1, 1993 showed normal hearing in the left ear and a moderate-to-profound high frequency hearing loss in the right ear. Appellant's hearing baseline was reestablished in 2000 due to a negative significantly better hearing (STS) in the right ear. The baseline was then reestablished in 2012 due to a significant change in both ears that year which was not likely occupationally related. A most recent hearing examination in January 2013 showed mild hearing loss in the left ear and mild-to-profound hearing loss in the right ear. Dr. Artz advised that the decline of loss in both ears in 2012 was of a configuration and degree not likely due to exposure to hazardous noise. He determined that appellant had two percent bilateral hearing impairment under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). A chronological audiometric history listed his audiograms obtained by the employing establishment from September 1, 1993 to January 1, 2013.

In undated statements, appellant related that he had a high frequency hearing loss during his Air Force career but regained his hearing in 1976. In 1984 or 1985, he experienced a round window rupture in his right ear. The rupture was repaired with no appreciable hearing loss.

An occupational noise exposure chart showed that from 1993 to 2013 appellant was exposed to noise while working at the employing establishment. Descriptions of appellant's student trainee aircraft systems maintenance worker and aircraft mechanic positions set forth the duties and physical requirements of each position.

The medical records from the employing establishment's health unit included reports of its annual physical examinations and audiograms performed under a hearing conservation program from September 1, 1993 to June 18, 2013. This evidence reflected that appellant had asymmetrical sensorineural hearing loss, mild to profound high frequency sensorineural hearing loss in the right ear, mild high frequency sensorineural hearing loss in the left ear and tinnitus.

The treatment notes dated February 24 to April 20, 1989 contain an illegible signature but provided a history that in February 1989 appellant was involved in a scuba diving incident. He sustained a hemorrhage into the tympanic membrane in the right ear for which he underwent right exploratory tympanostomy with patching of right round window perilymph fistula on

² Appellant retired from the employing establishment effective April 30, 2013.

March 7, 1989. Audiograms performed during appellant's examinations revealed high frequency sensorineural hearing loss.

By letter dated September 4, 2013, OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. R. Michael Loper, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation to determine whether appellant had any employment-related noise-induced hearing loss.

In a September 19, 2013 medical report, Dr. Loper advised that audiometric data from 1989 and 1993 showed severe high frequency sensorineural loss, auris dextra (AD) and hearing within normal limits, "[auris sinistra] AS." The left ear showed mild-to-moderate gently sloping hearing loss, which was no worse than presbycusis. The right ear showed mild-to-profound high frequency loss, which was consistent with appellant's prior history and change in hearing, AD, was no worse than presbycusis. Dr. Loper advised that appellant's workplace noise exposure was sufficient as to intensity and duration to have caused the loss in question. He noted that appellant's prior scuba diving accident and resultant right ear surgery related to his hearing loss. Appellant had no noisy hobbies or diabetes. On physical examination, Dr. Loper reported clear ear canals and intact tympanic membranes. Drum mobility was normal. Dr. Loper diagnosed sensorineural hearing loss. He advised that the condition was not caused by appellant's work-related noise exposure. Dr. Loper explained that he had a preexisting hearing loss in the right ear and the change since then was no worse than presbycusis. He further explained that appellant's left ear hearing loss was also no worse than presbycusis. An audiometric test was conducted on the same day as Dr. Loper's examination. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of the right ear as 25, 25, 40 and 45, respectively. Testing at the same frequency levels noted above revealed decibel losses of 20, 15, 20 and 30, respectively, regarding the left ear. Dr. Loper recommended hearing conservation.

In an October 4, 2013 decision, OWCP accepted that appellant filed a timely claim and was exposed to noise during his federal employment. It denied his claim on the grounds that the medical evidence did not establish that his hearing loss was causally related to the accepted work-related noise exposure.

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 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.⁴ 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.⁵

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶ 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.⁷

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish his or her claim, OWCP also has a responsibility in the development of the evidence.⁸

ANALYSIS

It is not disputed that appellant was exposed to work-related noise while working as an aircraft mechanic at the employing establishment. In an October 4, 2013 decision, OWCP denied appellant's occupational disease claim finding that the medical evidence rested with Dr. Loper, an OWCP referral physician, who found that appellant's hearing loss was not causally related to the established employment-related noise exposure. The Board finds that this case is not in posture for decision.

In a September 19, 2013 form report, Dr. Loper diagnosed sensorineural hearing loss and stated that appellant's workplace noise exposure was sufficient as to intensity and duration to have caused the hearing loss in question. He also noted, however, that the loss was not due to noise exposure during appellant's federal employment. Dr. Loper's brief opinion regarding the cause of appellant's hearing loss is equivocal in nature and of limited probative value in determining the issue of causal relationship.⁹ His report lacks adequate medical rationale to support that appellant's hearing loss was not caused or contributed to by his employment. Dr. Loper stated that appellant's left ear hearing loss was no worse than presbycusis; but he did not provide a full explanation of how appellant's hearing loss was no worse than presbycusis.¹⁰

⁶ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.* at 351-52.

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁸ *See Claudia A. Dixon*, 47 ECAB 168, 170 (1995).

⁹ *D.F.*, Docket No. 09-1080 (issued December 7, 2009); *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹⁰ *D.F.*, *id.*

Dr. Loper also indicated that the preexisting right ear hearing loss which was related to a prior scuba diving accident and resultant surgery was no worse than presbycusis. Again, he did not clearly address causal relationship in eliminating the accepted noise exposure in appellant's dates as an aircraft mechanic.

Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹¹ When OWCP selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.¹² Because it referred appellant to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused by his federal employment.¹³ Dr. Loper's opinion is equivocal and does not provide a sufficiently rationalized opinion on the cause of appellant's hearing loss.

The case will be remanded to OWCP for further development of the medical evidence.¹⁴ On remand, OWCP should ask Dr. Loper to clarify his opinion on whether appellant's hearing loss was caused or contributed to by the established work-related noise exposure.¹⁵ Following this and any other further development deemed necessary, it shall issue a *de novo* decision on appellant's claim.¹⁶

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant developed sensorineural hearing loss in the performance of duty.

¹¹ *Phillip L. Barnes*, 55 ECAB 426, 441 (2004); *see also Virginia Richard (Lionel F. Richard)*, 53 ECAB 430, 433 (2002); *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985); *William J. Cantrell*, 34 ECAB 1233, 1237 (1993).

¹² *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

¹³ *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

¹⁴ *S.E.*, Docket 08-2243 (issued July 20, 2009).

¹⁵ When a medical evaluation is made at its request, OWCP has the responsibility of obtaining a proper evaluation. *Leonard Gray*, 25 ECAB 147, 151 (1974).

¹⁶ *See P.K.*, Docket No. 08-2551 (issued June 2, 2009); *see also Horace Langhorne*, 29 ECAB 820, 822 (1978).

ORDER

IT IS HEREBY ORDERED THAT the October 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: July 2, 2014
Washington, DC

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

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

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