

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

---

C.H., Appellant )

and )

TENNESSEE VALLEY AUTHORITY, )  
PARADISE FOSSIL PLANT, Drakesboro, KY, )  
Employer )

---

**Docket No. 14-608  
Issued: July 24, 2014**

*Appearances:*  
Ronald K. Bruce, Esq., for the appellant  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 24, 2014 appellant, through his attorney, filed a timely appeal from the December 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

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

**FACTUAL HISTORY**

On November 20, 2012 appellant, then a 78-year-old retired conveyer car dumper operator,<sup>2</sup> filed an occupational disease claim alleging that his hearing loss was caused by factors

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The record reflects that appellant retired on October 16, 1994.

of his federal employment. He indicated that he realized the disease or illness was caused or aggravated by his employment on November 8, 2012. The employing establishment controverted the claim.

By letter dated December 14, 2012, OWCP informed appellant of the type of evidence needed to support his claim. It requested that he submit a statement which included his work history, the date he first noticed his hearing loss, any prior hearing problems or claims and a description of any hobbies that involved exposure to loud noise.

On December 14, 2012 appellant provided a narrative statement and indicated that he began to work for the employing establishment in 1981 as a laborer for four years. He noted that on a daily basis, he was exposed to loud noises for eight hours a day, five days a week, which were produced by large pumps, a vacuum truck, coal pulverizers and conveyor belts. Appellant then worked for the employing establishment as a conveyor belt operator for approximately 10 years with exposure to loud noises. He indicated that he wore earplugs part of the time. Appellant's nonfederal employment included working in a steel plant from 1953 to 1976. He stated that he was exposed to noise for the one year that he worked as a laborer but, during the rest of his tenure, he was in an enclosed cab and the noise exposure was minimal. Appellant also listed a furniture store, where he operated a fork lift from 1979 to 1981 with very little noise exposure and work as a security guard from 1995 to 1997 with no noise exposure. He explained that he first realized his hearing loss was related to his employment when he reviewed the report of his physician on November 8, 2012.

In a September 27, 2012 report, Dr. Dave Uday, an otolaryngologist, noted appellant presented due to a slow loss in his hearing over many years. Appellant reported loud noise at the employing establishment for 14 years and at the steel plant for 23 years. On examination, the ear canals and the tympanic membranes were normal. Dr. Uday indicated that the audiometric evaluation revealed a hearing loss of 25 decibels (dB) in the right and left ears. He determined that discrimination was 92 percent in the right and 96 percent in the left ear and tympanometry was normal bilaterally. Dr. Uday assessed mild-to-moderate sensorineural bilateral hearing loss. An audiogram dated September 27, 2012 accompanied his report.

In a letter dated December 18, 2012, the employing establishment controverted the claim. William T. Sabin, the assistant plant manager explained that mandatory hearing protection had been enforced policy since 1973. He also noted that the employing establishment had a hearing conservation program. Copies of treatment notes from December 22, 1986 to September 26, 1994 were also included as well as employing establishment audiograms from March 25, 1982 to March 5, 1994. OWCP also received a job history summary from the employing establishment.

On February 19, 2013 OWCP referred appellant for a second opinion, along with a statement of accepted facts, a set of questions and the medical record to Dr. Andrew S. Mickler, a Board-certified otolaryngologist. In a report dated March 4, 2013, Dr. Mickler referenced appellant's history noted examination findings. He diagnosed bilateral sensorineural hearing loss and opined that it did not appear to be noise induced. Dr. Mickler indicated that there was an audiogram from the date of hire and an audiogram from the date of retirement. He opined that when comparing the audiograms, there was no standard threshold shift when comparing the

audiograms from August 25, 1982 and March 14, 2013. Dr. Mickler advised that appellant's hearing loss was not due to noise exposure. A March 4, 2013 audiogram taken on behalf of him reflected that testing at 500, 1,000, 2,000 and 3,000 hertz (Hz) showed the following decibel losses: 35, 50, 40 and 45 in the right ear and 40, 50, 40 and 45 in the left ear.

In an April 4, 2013 report, an OWCP medical adviser indicated that clarification was needed with regards to when appellant worked for the employing establishment. He noted that the second opinion audiogram demonstrated a significant loss of hearing in a pattern consistent with noise exposure.

In an April 15, 2013 memorandum, OWCP's medical adviser noted that appellant was last exposed to the conditions alleged to have caused his hearing loss on October 16, 1994, the date of his resignation from the employing establishment and he explained that the audiogram demonstrated a significant loss of hearing in a pattern consistent with noise exposure. The medical adviser noted that Dr. Mickler had compared employing establishment audiograms from 1981 to 1994 and advised that appellant did not suffer any threshold shift during that time. He opined that appellant did not suffer any noise-induced hearing loss during his period of federal employment, and thus a schedule award was not appropriate.

In an April 17, 2013 decision, OWCP denied appellant's claim finding that the medical evidence did not establish his hearing loss was causally related to his federal employment.

On April 25, 2013 appellant's representative requested a telephonic hearing, which was held on September 12, 2013.

In an October 17, 2013 letter, appellant's attorney argued that the medical evidence supported that appellant had sensorineural hearing loss which was the result of noise exposure. He further argued that appellant had an 18.4 percent binaural impairment according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (6<sup>th</sup> ed. 2009) (hereinafter, A.M.A., *Guides*). Accompanying this letter was a September 5, 2013 report from Dr. John D. Loucks, a Board-certified otolaryngologist, who noted that appellant was having hearing problems. Dr. Loucks indicated that appellant had a long history of hearing loss and noise exposure which was progressive. He advised that appellant denied any earaches or infections and had no tinnitus. Dr. Loucks examined appellant and reviewed the audiological findings. He explained that they revealed a mild to severe sensorineural hearing loss, bilaterally and good discrimination scores with Type A tympanograms. Dr. Loucks diagnosed sensorineural hearing loss and advised that appellant would benefit from amplification. A September 5, 2013 audiogram accompanied his report. It revealed a mild-to-severe sensorineural hearing loss, bilaterally.

By decision dated December 30, 2013, OWCP hearing representative affirmed the April 17, 2013 OWCP decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA 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, that an injury was sustained 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.<sup>5</sup>

## ANALYSIS

In this case, the record supports that appellant was exposed to occupational noise as conveyor belt operator from 1981 to 1995. OWCP indicated that appellant was provided with and used earplugs and earmuffs while at work and was part of a hearing conservation program of the employing establishment.<sup>6</sup> The issue for determination is whether this exposure to work-related noise caused appellant’s hearing loss. The Board finds that the medical evidence of record does not establish that his hearing loss is causally related to the accepted employment-related noise exposure.

---

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> Although the claim for hearing loss was filed more than three years after appellant retired, the fact that the employing establishment had a hearing conservation program in place during appellant’s employment renders the appeal timely. *W.B.*, Docket No. 14-276 (issued May 2, 2014).

In support of his claim, appellant submitted a September 27, 2012 report from Dr. Uday, who noted appellant's history of injury and treatment and examined appellant. Dr. Uday determined that the ear canals and the tympanic membranes appeared to be normal. He indicated that the audiometric evaluation revealed a hearing loss of 25 dB in the right and left ears. Dr. Uday assessed mild-to-moderate bilateral sensorineural hearing loss. He noted that appellant had noise exposure from working at the employing establishment for 14 years and working at a steel plant for 23 years. Dr. Uday did not offer any specific opinion as to the cause of appellant's hearing loss. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>7</sup>

Appellant also provided a September 5, 2013 report, from Dr. Loucks, who noted that appellant was having problems with his hearing and had a long history of hearing loss and noise exposure which was progressive. He examined appellant and reviewed the audiological findings. Dr. Loucks opined that the audiograms revealed a mild to severe sensorineural hearing loss, bilaterally. He diagnosed sensorineural hearing loss and advised that appellant would benefit from amplification. Likewise, this report is of limited probative value as he did not offer a specific opinion as to whether appellant's noise exposure with the employing establishment caused or contributed to his diagnosed hearing loss.

OWCP referred appellant to Dr. Mickler for a second opinion evaluation regarding the extent and degree of any employment-related hearing loss. Dr. Mickler diagnosed bilateral sensorineural hearing loss and opined that the sensorineural hearing loss was not due to employment-related noise exposure. He opined that when comparing the audiograms, there was no standard threshold shift. Dr. Mickler's opinion is supported by the opinion of OWCP's medical adviser, who reviewed the medical evidence of record, requested clarification with regards to the dates that appellant worked for the employing establishment and opined on April 15, 2013 that he 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. Appellant's physicians did not specifically address why appellant's workplace noise exposure from 1981 to 1995 caused or contributed to his hearing loss while Dr. Mickler and an OWCP medical adviser both opined that workplace noise exposure at the employing establishment did not cause his claimed hearing loss. There is no other medical evidence supporting that his hearing loss is employment related. Thus, appellant has not met his burden of proof to establish that his hearing loss is causally related to employment factors.

On appeal, counsel contends that his hearing loss was causally related to workplace noise exposure. However, as found above, the medical evidence is not sufficient to establish that appellant's hearing loss is causally related to employment factors.

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.

---

<sup>7</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof in establishing that he sustained an employment-related hearing loss causally related to factors of his federal employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 30, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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