



## **FACTUAL HISTORY**

This case was previously before the Board. In a decision dated August 21, 2013, the Board set aside OWCP's February 1, 2013 decision, and remanded the case for further development of the medical evidence and to obtain a more current second opinion examination of appellant's hearing loss to determine whether he developed bilateral hearing loss in the performance of duty, causally related to factors of his federal employment.<sup>2</sup> The facts of the case, as set forth in the prior decision, are incorporated by reference.

OWCP referred appellant to Dr. David Whitt, a Board-certified otolaryngologist, for a second opinion evaluation. In his December 9, 2013 report, Dr. Whitt reviewed a statement of accepted facts, appellant's medical records and history and conducted a physical examination. He diagnosed bilateral high frequency sensorineural hearing loss and tinnitus. A December 9, 2013 audiogram performed on his behalf showed the following decibel losses at frequencies of 500, 1,000, 2,000 and 3,000 hertz (Hz): 25, 25, 55 and 85 for the right ear and 40, 25, 50 and 90 for the left ear.<sup>3</sup> Dr. Whitt reported appellant's percent of hearing loss according to the formula derived by the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), as 34 percent monaural hearing loss in the right ear, 39 percent monaural hearing loss in the left ear and 35 percent hearing loss binaurally. He added 5 percent for tinnitus, equaling 40 percent bilateral hearing loss. Dr. Whitt noted that appellant had a long history of hearing loss since 1969. He indicated that appellant's hearing loss had worsened over the years and opined that it "was not due to additional noise exposure" encountered during his federal employment. Dr. Whitt attributed the hearing loss "to age *not* additional noise exposure." (Emphasis in the original.) He determined that the date of maximum medical improvement was December 1, 2013 and recommended hearing aids.

On January 9, 2014 Dr. Ronald Blum, an OWCP medical adviser, reviewed Dr. Whitt's report and audiometric test of December 9, 2013. He concurred with Dr. Whitt's findings and calculations under the sixth edition of the A.M.A., *Guides* and concluded that appellant had a 40 percent bilateral hearing loss. Dr. Blum found that workplace noise exposure was "not deemed sufficient to implicate it as a contributing factor to [appellant's] hearing loss." He further opined that hearing aids should not be authorized as appellant's hearing loss was not employment related. Dr. Blum determined that the date of maximum medical improvement was December 9, 2013.

By decision dated January 10, 2014, OWCP denied the claim on the basis that the evidence of record failed to establish causal relationship between appellant's hearing loss and factors of his federal employment.

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<sup>2</sup> Docket No. 13-862 (issued August 21, 2013). On July 25, 2002 appellant, then a 53-year-old quality assurance specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss due to exposure to electrical and air equipment during the course of his federal employment.

<sup>3</sup> The audiological equipment was last calibrated on December 19, 2012.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> 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 injury<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup>

## 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.

The Board finds that OWCP properly referred appellant to Dr. Whitt for a second opinion evaluation who reviewed a statement of accepted facts, appellant’s medical records and history and conducted a physical examination. Dr. Whitt indicated that appellant had a long history of hearing loss since 1969. He also indicated that appellant’s hearing loss had worsened over the years, however, he concluded that it “was not due to additional noise exposure” encountered during his federal employment and attributed it “to age.”

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<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> 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).

<sup>6</sup> *See J.C.*, Docket No. 09-1630 (issued April 14, 2010). *See also Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>7</sup> *Id.* *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>8</sup> *See I.J.*, 59 ECAB 408 (2008). *See also Victor J. Woodhams*, 41 ECAB 345 (1989).

On January 9, 2014 Dr. Blum, an OWCP medical adviser, reviewed Dr. Whitt's report and audiometric test of December 9, 2013 and concurred with his findings and calculations under the sixth edition of the A.M.A., *Guides*. He found that workplace noise exposure was "not deemed sufficient to implicate it as a contributing factor to [appellant's] hearing loss." Dr. Blum further opined that hearing aids should not be authorized as appellant's hearing loss was not employment related.

The reports from Drs. Whitt and Blum represent the weight of the medical evidence and establish that appellant did not sustain hearing loss due to exposure to noise in the workplace.<sup>9</sup> There is no other medical evidence in the record to support that appellant's hearing loss is employment related. Appellant has not submitted any medical evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure.<sup>10</sup> Thus, 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.<sup>11</sup>

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.<sup>12</sup> Causal relationship must be established by 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 contends that OWCP's decision is improper on the basis that his hearing got worse from 1968 to 2004 while working on the floor, outside, in warehouses and shop buildings where he was constantly exposed to loud noise. Based on the findings and reasons stated above, the Board finds that appellant's arguments are not substantiated.

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

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

<sup>10</sup> See *C.C.*, Docket No. 13-2162 (issued February 25, 2014).

<sup>11</sup> See *R.B.*, Docket No. 13-1858 (issued January 23, 2014).

<sup>12</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 7, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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