

federal employment. He was required to be in maintenance shops from one to three hours daily which were extremely noisy. Appellant first became aware of his hearing loss on April 18, 2001 and of its relationship to his employment on December 15, 2012. He noted that he initially sustained work-related hearing loss in 2001 for which he was compensated but that his condition continued to worsen.²

Audiograms and hearing conservation data dated October 6, 1988 to April 17, 2001 were submitted.

By letter dated January 22, 2013, OWCP requested additional factual and medical evidence. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to the conditions of his employment and all nonoccupational exposure to noise. OWCP also requested that appellant provide medical documentation pertaining to any prior treatment he received for ear or hearing problems.

In a February 20, 2013 letter, Therman Love, appellant's supervisor, stated that appellant's duties required him to be in "IMD" shops from one to three hours a day where he was exposed to hazardous noise. He noted that he was provided hearing protection. Mr. Love stated that appellant had been performing these duties for the past nine years and was previously employed as the supervisor of the paint and body shop.

On March 26, 2013 OWCP referred appellant to Dr. Jeffrey Paffrath, a Board-certified otolaryngologist, for a second opinion evaluation. It prepared a statement of accepted facts addressing his federal work history from 1988 to the present while working for the Department of the Army. Appellant held the positions of mechanic, mechanic leader and mechanic supervisor. The statement provided a list of noise sources to which appellant had been exposed during the course of his federal employment.

On April 16, 2013 appellant underwent audiometric testing and was examined by Dr. Paffrath. As of October 6, 1988, when appellant began his federal employment, he had a borderline hearing loss at 6,000 Hertz (Hz). Dr. Paffrath diagnosed bilateral sensorineural hearing loss and opined that the hearing loss was not in excess of what would normally be predicated on the basis of presbycusis. When asked if appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question, Dr. Paffrath opined that appellant's workplace had started to produce his hearing loss but not beyond presbycusis. Results of audiometric testing performed on April 16, 2013 reflected testing at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed the following: right ear 25, 20, 15 and 55 decibels, left ear 20, 15, 20 and 20 decibels.

By decision dated May 7, 2013, OWCP denied appellant's claim. It found that the medical evidence failed to establish that his hearing loss was causally related to his accepted noise exposure.

² On October 24, 2001, OWCP granted appellant a schedule award for five percent bilateral hearing loss. The award covered a period of 10 weeks from August 29 to November 6, 2001. The record before the Board contains no other information with respect to appellant's prior hearing loss claim.

On May 24, 2013 appellant requested reconsideration. He noted that he had a prior April 2, 2001 hearing loss claim which OWCP accepted based on his duties as a paint and body shop employee, claim No. xxxxxx255. Appellant stated that, from May 2003 to the present, he worked as a quality assurance specialist. He performed the same duties as his prior paint and body shop position and was exposed to the same noise levels. Appellant's position as a quality assurance specialist exposed him to hazardous noise from one to three hours a day.

By decision dated August 7, 2013, OWCP affirmed the May 7, 2013 decision, as modified to find that appellant was in the performance of duty. It found that appellant's hearing loss was not caused by hazardous noise levels but rather due to presbycusis.

On September 26, 2013 appellant requested reconsideration. He contended that his hearing loss was not due to presbycusis and that other coworkers had accepted hearing loss claims. Appellant submitted an informational article from the National Institute of Health (NIH) regarding presbycusis.

By decision dated October 11, 2013, OWCP affirmed the August 7, 2013 decision. It found that the medical evidence of record failed to establish causal relation. OWCP noted that the weight of the medical evidence rested with Dr. Paffrath's April 16, 2013 report.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

Appellant has the burden of establishing by weight of the reliable, probative and substantial evidence that her hearing loss condition was causally related to noise exposure in her federal employment.⁵ 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.⁶

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;⁷ (2) a

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁶ *See John W. Butler*, 39 ECAB 852, 858 (1988).

⁷ *Michael R. Shaffer*, 55 ECAB 386 (2004).

factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition,⁸ and (3) medical evidence establishing 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.⁹

The medical evidence required to establish causal relationship generally 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 medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹⁰

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.¹¹ 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.¹²

Although appellant must prove the facts alleged, 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.¹³

ANALYSIS

The issue is whether appellant established that he sustained an employment-related hearing loss due to noise exposure in his federal employment. The Board finds this case is not in posture for decision.

OWCP referred appellant to Dr. Paffrath, a Board-certified otolaryngologist, for a second opinion evaluation. In a December 16, 2013 report, Dr. Paffrath diagnosed bilateral sensorineural hearing loss and opined that it was not in excess of what would normally be predicated on the basis of presbycusis. In answer to the question of whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question, Dr. Paffrath stated that appellant's workplace had started to produce his hearing loss but not beyond presbycusis.

⁸ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁹ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹¹ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

¹² *See John W. Butler*, 39 ECAB 852, 858 (1988).

¹³ *See Claudia A. Dixon*, 47 ECAB 168 (1995).

The Board finds that Dr. Paffrath's opinion regarding causal relationship is equivocal in nature and, of diminished probative value.¹⁴ Dr. Paffrath opined that appellant's hearing loss was initially produced by work-related noise exposure but not beyond presbycusis. He failed to provide a fully rationalized medical opinion.¹⁵ Dr. Paffrath did not adequately explain why, despite the accepted hazardous noise exposure, appellant's hearing loss was due to presbycusis.¹⁶ He provided a brief response to the inquiry on causal relationship. Dr. Paffrath did not discuss appellant's medical history. Further the statement of accepted facts prepared for Dr. Paffrath failed to mention appellant's 2001 claim which was accepted for binaural hearing loss. A medical opinion based on an incomplete statement of accepted facts is of reduced probative value.¹⁷

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁸ 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.¹⁹ Because it referred appellant to Dr. Paffrath, it has the responsibility to obtain a report that will resolve the issue of whether appellant's hearing loss was caused or contributed to by his federal employment.²⁰

The case will be remanded to OWCP for further development of the evidence.²¹ On remand, OWCP should amend the statement of accepted facts and provide Dr. Paffrath with information regarding appellant's prior hearing loss claim.²² It should refer appellant to Dr. Paffrath for examination and clarification on his opinion.²³ Following this and any other further development as deemed necessary, it shall issue an appropriate merit decision.

CONCLUSION

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

¹⁴ *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹⁵ *D.A.*, Docket No. 11-1291 (issued January 18, 2012).

¹⁶ Presbycusis is defined as progressive bilaterally symmetrical perceptive hearing loss occurring with advancing age. See DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th ed. (1988).

¹⁷ See *E.O.*, Docket No. 12-517 (issued July 6, 2012); *A.R.*, Docket No. 11-692 (issued November 18, 2011).

¹⁸ *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹⁹ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

²⁰ See *Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

²¹ *S.E.*, Docket 08-2243 (issued July 20, 2009).

²² Claim No. xxxxxx255.

²³ 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).

ORDER

IT IS HEREBY ORDERED THAT the October 11 and August 7, 2013 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this decision.

Issued: June 19, 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