

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

---

D.A., Appellant )

and )

DEPARTMENT OF THE NAVY, PUBLIC )  
WORKS DEPARTMENT, Meridian, MS, )  
Employer )

---

**Docket No. 14-47  
Issued: May 5, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 17, 2013 appellant filed a timely appeal of a September 16, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying an occupational disease claim. 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 this case.

**ISSUE**

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

On appeal appellant contends that he has established that his hearing loss is employment related.

---

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

## **FACTUAL HISTORY**

On April 17, 2013 appellant, then a 59-year-old facilities management specialist, alleged that on June 15, 1999 he first realized that his hearing loss was caused by his employment. He was last exposed to noise at work on March 29, 2013 and reported his condition to his employer on April 1, 2013.

By letter dated May 15, 2013, OWCP informed appellant that the evidence of record was insufficient to establish his claim. Appellant was advised as to the medical and factual evidence to submit and given 30 days to provide this information.

In response to OWCP's request, appellant submitted medical and factual evidence in support of his claim including audiograms and hearing conservation data from the employing establishment for the period 1985 through 2012.

The initial hearing conservation data from the employing establishment was an audiogram dated July 22, 1985 recording a hearing loss of 10, 5, 5 and 10 in the right ear and 10, 10, 5 and 5 in the left ear for frequency levels recorded at 500, 1,000, 2,000 and 3,000 hertz (Hz) respectively.

The most current hearing conservation data was a July 5, 2012 audiogram which recorded a hearing loss of 20, 20, 40 and 35 in the right ear and 20, 25, 15 and 30 in the left ear for frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz respectively.

In an August 10, 2012 report, Richard H. Blair, an audiologist, diagnosed bilateral sensorineural hearing loss based on a July 5, 2012 audiogram. He stated that appellant's hearing loss was consistent with his occupational history and recreational exposure to noise.

On August 19, 2013 OWCP referred appellant for a second opinion evaluation with Dr. John S. Keebler, a second opinion Board-certified otolaryngologist, for an evaluation regarding his hearing loss. Accompanying the referral was a statement of accepted facts listing appellant's employment history. OWCP noted that he was employed as an H/V electrician and facilities management specialist during which time he was exposed to electrical noise, noise from jet aircraft landing and taking off for eight hours a day, five days a week.

In a September 3, 2013 report, Dr. Keebler diagnosed mild-to-moderate sensorineural hearing loss. A September 3, 2013 audiogram recorded a hearing loss of 15, 30, 40 and 45 in the right ear and 20, 25, 30 and 25 in the left ear for frequency levels recorded at 500, 1,000, 2,000 and 3,000 Hz respectively. Dr. Keebler opined that the hearing loss was not due to appellant's federal employment. He stated that appellant's sensorineural hearing loss was not in excess of what would normally be due to presbycusis. In support of this conclusion, Dr. Keebler stated that there were minimal changes from the 1985 audiogram to the current 2012 audiogram.

By decision dated September 16, 2013, OWCP denied appellant's claim, finding that the medical evidence was insufficient to demonstrate a causal relationship between his hearing loss condition and employment-related noise exposure.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>2</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 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.<sup>3</sup> 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.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> 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.<sup>7</sup> 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

Appellant contends that his hearing loss is causally related to noise exposure in his federal employment. The Board finds that he has not submitted medical evidence to establish that his hearing loss was caused or aggravated by his federal employment.

---

<sup>2</sup> *Id.*

<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *D.U.*, Docket No. 10-144 (issued July 27, 2010); *R.H.*, 59 ECAB 382 (2008); *Roy L. Humphrey*, 57 ECAB 238 (2005); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>6</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>7</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In support of his claim, appellant submitted audiograms for the period 1985 to 2012 obtained as part of the hearing conservation program at work. This evidence did not meet OWCP's criteria as the audiograms were not certified by a physician as being accurate.<sup>9</sup> Appellant also submitted an August 10, 2012 report from Mr. Blair, an audiologist, who diagnosed bilateral sensorineural hearing loss which he found was consistent with appellant's occupational history and recreational exposure to noise. The Board notes that audiologists are not included among the healthcare professionals defined as a physician under FECA.<sup>10</sup> Thus, Mr. Blair's opinion is of no probative medical value.<sup>11</sup>

Following the submission of evidence from appellant, OWCP referred appellant for an evaluation by Dr. Keebler. However, while Dr. Keebler diagnosed a hearing loss, he opined that it was not in excess of what would normally be due to presbycusis and not related to appellant's employment history of noise exposure. The report of Dr. Keebler, a specialist in the appropriate specialty, constitutes the weight of medical opinion.<sup>12</sup>

Appellant has not satisfied the requirements to establish that his hearing loss is causally related to his federal employment. He has failed to submit medical evidence to establish causal relationship and, therefore, has failed to discharge his burden of proof to establish that he sustained a condition due to factors of his federal employment.

On appeal, appellant contends that OWCP's decision was not supported by the evidence and noted his history of work exposure establishes that he sustained a work-related hearing loss. As previously stated, however, the weight of the medical evidence failed to establish that his hearing loss was causally related to his accepted employment-related noise exposure. The Board finds, therefore, that appellant has not established that he has an employment-related hearing loss.

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 sustained an occupational disease in the performance of duty.

---

<sup>9</sup> See *Robert E. Cullison*, 55 ECAB 570 (2004) (OWCP does not have to review every uncertified audiogram).

<sup>10</sup> 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law.

<sup>11</sup> *R.V.*, Docket No. 12-248 (issued June 6, 2012); *Thomas O. Bouis*, 57 ECAB 602 (2006).

<sup>12</sup> See *John D. Jackson*, 55 ECAB 465 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 16, 2013 is affirmed.

Issued: May 5, 2014  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

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

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