

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

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**T.T., Appellant**

**and**

**TENNESSEE VALLEY AUTHORITY,  
Chattanooga, TN, Employer**

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**Docket No. 14-1616  
Issued: November 20, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

**JURISDICTION**

On July 14, 2014 appellant, through his attorney, filed a timely appeal from a May 21, 2014 merit decision of the Office of Workers' Compensation Programs' (OWCP) hearing representative. 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 sustained right ear hearing loss causally related to factors of his employment.

**FACTUAL HISTORY**

On April 16, 2013 appellant, then a 53-year-old boilermaker, filed an occupational disease claim alleging that he sustained hearing loss as a result of his employment. He first became aware of his condition on January 1, 2003 and realized that it resulted from his

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

employment on April 4, 2013. Appellant stated that he was first notified of work-related hearing loss by letter on April 4, 2013 when he reviewed the report of Dr. William Logan, a Board-certified otolaryngologist. The employing establishment noted that appellant first reported the condition to his supervisor on May 21, 2013 and was last exposed to the conditions alleged to have caused his condition on January 30, 1989.

By letter dated May 19, 2013, OWCP advised appellant that insufficient evidence was received to establish his claim and requested additional evidence to demonstrate that he sustained hearing loss as a result of factors of his employment. In a separate letter of the same date, it also requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure and whether hearing protection was provided.

In an undated statement, appellant provided several dates when he worked as a boilermaker for various plants in the employing establishment.<sup>2</sup> He noted that he was exposed to loud noises on a daily basis produced by grinding, hammering on metal, equipment noise, compressors, air tools, turbines, large fans, large pumps and conveyor belts. Appellant worked five days per week, eight hours per day and wore earplugs in the later years. He also reported that in 1977 he worked for a car dealer and had no noise exposure at work. In 1978 appellant worked for a private construction company and was exposed to noise from hammering nails. In 1979 he worked four months for a private company as an assembly line worker with no noise exposure.

In a March 19, 2013 report, Dr. Logan opined that appellant's complaints of hearing loss were work related and noted that he worked around loud noise for a number of years as a boilermaker. He reviewed appellant's history and conducted an examination. Dr. Logan observed shortness of air, arthritis, back pain and muscle weakness. Examination of the ears demonstrated no deformity or discharge. Dr. Logan reported that an audiogram revealed mild sensorineural hearing loss on the right at 500 hertz and moderate hearing loss at 3,000 to 4,000 hertz rising back to mild at 6,000 hertz and a mild sensorineural hearing loss at 4,000 and 8,000 hertz on the left. Tympanograms demonstrated slight negative pressure and discrimination scores were 100 percent bilaterally. Dr. Logan diagnosed sensorineural hearing loss. He advised appellant that no medicine or surgery was likely to improve his hearing and recommended that he avoid unnecessary exposure to loud noise and use ear protection when around loud noise.

In a July 30, 2013 letter, appellant's counsel, stated that appellant noticed some hearing loss in 2003 but he did not learn that his hearing loss was work related until April 4, 2013 when he reviewed the report of Dr. Logan. He noted that appellant's CA-35B reflected that he had no previous hearing problems prior to his employment.

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<sup>2</sup> From March 12, 1979 to June 12, 1981 appellant worked at the Hartsville nuclear plant. From December 30, 1981 to March 19, 1982; April 2 to June 8, 1984; April 24 to May 23, 1986; and October 21 to November 23, 1987 he worked at the Widows Creek plant. From August 4 to December 17, 1982; July 15 to 31, 1983; January 4 to April 3, 1984; April 12 to 30, 1985; and August 30, 1985 to January 24, 1986 appellant worked at the Sequoyah plant. From 1979 to October 2007, he worked out of the Boilermakers Union. From 2007 to November 2010, appellant worked at various power plants.

In an August 28, 2013 report, Whitney R. Mauldin, an audiologist, related that the employing establishment requested her to review and provide an opinion regarding appellant's claim for work-related hearing loss. She reviewed appellant's history and noted that he worked at numerous power plants and other contracting companies for the past 24 years where he was exposed to excessive noise during the last 24 years that was not related to his federal employment. The audiologist reported that appellant's first hearing examination in 1978 revealed mild loss of 6,000 hertz at his left ear and normal hearing at his right ear. She stated that there were no significant changes on other examinations during any of appellant's intermittent employment. The audiologist also pointed out that appellant did not file a claim for compensation until 24 years after his employment and 10 years after he noted that he became aware of his hearing loss in 2003. The employing establishment submitted appellant's audiological evaluations dated from February 16, 1978 to September 26, 1987.

OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Jack W. Aland, a Board-certified otolaryngologist, for a second opinion examination and an audiological evaluation. In an August 26, 2013 report, Dr. Aland reviewed the statement of accepted facts and noted that no previous audiograms were available for review. Upon examination, he observed clear canals and intact drums. Both drums had normal mobility. Dr. Aland provided the results of basic fork tests. He diagnosed neurosensory hearing loss. Dr. Aland noted "yes" that appellant's workplace exposure was sufficient as to intensity and duration to have caused his hearing loss, but noted that appellant's work was not all during his federal employment. He also indicated that appellant's hearing loss was not due to noise exposure during appellant's federal employment. Dr. Aland explained that because hearing loss was only in the right ear he doubted that it was from workplace exposure. An audiogram performed that day with testing at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz revealed decibel losses of the right ear as 15, 20, 30 and 50 respectively. Testing at the same frequency levels revealed decibel losses of 20, 15, 30, and 30 of the left ear.

In a decision dated September 20, 2013, OWCP denied appellant's claim due to insufficient medical evidence. It accepted that he was exposed to noise during his federal employment and was diagnosed with right sensorineural hearing loss but found that the medical evidence failed to establish that his hearing loss was causally related to the established work-related noise exposure.

In a letter dated September 26, 2013 and received by OWCP on October 21, 2013, appellant's attorney requested a telephone hearing, which was held on March 14, 2014. Appellant's counsel described his work as a boilermaker in the various plants and his exposure to loud noise during his federal employment. He contended that appellant established that he was exposed to loud noise on a daily basis while working at the employing establishment. Counsel noted that, although the second opinion examiner reported that appellant's hearing loss was not due to his federal employment, he acknowledged that appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question. He pointed out this discrepancy and contended that OWCP could not rely on this report. On the other hand, counsel alleged that OWCP should base its decision on the report of Dr. Logan.

By decision dated May 21, 2014, an OWCP hearing representative affirmed the September 20, 2013 decision denying appellant's hearing loss claim.

## LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup> In an occupational disease claim, appellant's burden requires submission of 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>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> 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>7</sup> Neither the fact that appellant's condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.<sup>8</sup>

## ANALYSIS

Appellant alleged that he sustained hearing loss as a result of factors of his employment. OWCP accepted that he was exposed to noise while working as a boilermaker at the employing establishment and that he sustained right sensorineural hearing loss. It denied appellant's claim finding insufficient medical evidence to establish that his hearing loss was causally related to his federal employment.

The Board finds that this case is not in posture for decision and must be remanded for further development.

OWCP denied appellant's claim based on the August 26, 2013 report of Dr. Aland, an OWCP referral physician, who found that appellant's right sensorineural hearing loss was not caused by employment-related noise exposure. The Board finds, however, that Dr. Aland failed

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>6</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994).

to provide a fully-rationalized medical opinion based on an accurate background that explained his conclusion. Dr. Aland did not review a complete and accurate account of appellant's occupational background. He noted that appellant's prior audiograms were not available for review. The Board has held that medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>9</sup> Dr. Aland also failed to provide a clear explanation of why appellant's federal work-related noise exposure did not cause or contribute to appellant's hearing loss. He indicated that appellant's workplace exposure was sufficient as to intensity and duration to have caused his hearing loss but also stated that he doubted that it was from workplace exposure. Although appellant's last day of exposure to federal noise exposure was in 1989, Dr. Aland fails to adequately explain how appellant's exposure to noise at the employing establishment did not cause or contribute in any way to his hearing loss.<sup>10</sup> Accordingly, the Board finds that Dr. Aland's medical opinion is not sufficiently rationalized to provide a sufficient basis for denying appellant's claim.

It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>11</sup> Once OWCP undertook development of the evidence by referring appellant to a second opinion physician, it has a duty to secure an appropriate report addressing all relevant issues.<sup>12</sup> As Dr. Aland failed to provide a rationalized medical opinion based on accurate history to support his findings, the case will be remanded to OWCP for further development of the medical evidence. After such further development as OWCP deems necessary, a *de novo* decision should be issued regarding the issue of whether appellant sustained a hearing loss causally related to factors of his employment.

On remand, OWCP should prepare a statement of accepted facts that includes appellant's exposure to noise at the employing establishment and the length and period of such exposures and refer the entire case record to Dr. Aland to obtain a rationalized opinion regarding whether appellant's hearing loss was causally related to factors of his employment, including whether his exposure to noise contributed in any way to his acknowledged hearing loss.

### **CONCLUSION**

The Board finds that this case is not in posture for decision regarding whether appellant met his burden of proof to establish that he has an employment-related hearing loss.

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<sup>9</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

<sup>10</sup> *See S.T.*, Docket No. 13-215 (issued April 1, 2013).

<sup>11</sup> *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

<sup>12</sup> *Peter C. Belkind*, 56 ECAB 580 (2005); *Ayanle A. Hashi*, 56 ECAB 234 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 21, 2014 decision of the Office of Workers' Compensation Programs is vacated and the case remanded for further action consistent with this decision of the Board.

Issued: November 20, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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