

FACTUAL HISTORY

On May 13, 2013 appellant, then a 59-year-old aircraft worker, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss and tinnitus as a result of noise exposure from his federal employment. He reported that he was exposed to noise from jet engines, pneumatic tools, diesel engines, rivet guns and shop noise. Appellant first became aware of his condition on April 17, 2013 and of its relationship to his employment on April 23, 2013.

In support of his claim, appellant submitted hearing conservation data and audiograms dated November 21, 2001 to May 1, 2013. His November 21, 2001 reference audiogram revealed the following decibel (dB) losses at 500, 1,000, 2,000 and 3,000 hertz (Hz): 25, 25, 20 and 30 for the right ear and 25, 20, 15 and 50 for the left ear. A position description for an aircraft worker was submitted along with an employment history noting appellant's employment as an aircraft worker from January 2, 2002 to the present.

By letter dated May 24, 2013, OWCP requested additional factual and medical evidence from appellant, including information regarding his employment history, when he related his hearing loss to conditions of employment and all nonoccupational exposure to noise. It also requested that he provide medical documentation pertaining to any prior treatment he received for ear or hearing problems.

Appellant responded to OWCP's questionnaire in an undated narrative statement. He reported that he first noticed his hearing loss in April 2001 due to ringing in his ears and had no prior hearing problems. Appellant further stated that he served in the U.S. Navy from 1973 to 1993 and worked for the Federal Government in 2000 and again from January 2002 to the present. He reported that he worked 40 hours per week and that hearing protection was provided by mickey mouse ears.

In a May 29, 2013 memorandum, the employing establishment reported that appellant was employed as an aircraft worker from January 2, 2002 to the present. It noted that past dosimetry results for the range of jobs performed by him averaged 79 to 85 dB per hour. The employing establishment also noted that sound level readings for an aircraft worker could reach upwards of 120 dB.

The employing establishment referred appellant on May 15, 2013 to the Naval Air Station Hospital for evaluation of appellant's hearing loss. In a May 22, 2013 medical report, received by OWCP on August 19, 2013, Dr. Karen M. Allstadt, a physician specializing in occupational medicine at the Naval Hospital, reported that audiometric testing performed that same date revealed the following dB losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 20, 15 and 40 for the right ear and 10, 10, 30 and 60 for the left ear. Dr. Allstadt reviewed appellant's employment history, exposure to work-related noise and prior audiograms dating back to November 21, 2001. She diagnosed asymmetrical sensorineural hearing loss and tinnitus, noting that his current audiogram indicated mild to moderately-severe high frequency sensorineural hearing loss in the left ear and mild-to-moderate high frequency sensorineural hearing loss in the right ear. When comparing the current audiometric findings to those at the beginning of appellant's employment, Dr. Allstadt noted that the degree of sensorineural hearing loss was in

excess of what would normally be predicated on the basis of presbycusis. She further stated that, due to various operations and equipment, appellant could be exposed to noise ranging from 79 to 120 dB, which was sufficient in intensity to cause a change in his hearing. Dr. Allstadt opined that his sensorineural hearing loss and tinnitus were due to his federal occupational noise exposure. She explained that even though appellant had hearing loss prior to his federal employment, his hearing in the high frequencies gradually declined on composite audiometric history. This decline was bilateral which was typically expected in occupational noise exposure.

In a September 10, 2013 statement of accepted facts (SOAF), OWCP provided a summary of appellant's nonfederal employment noting that he served in the Navy from 1973 to 1993 and was employed as a maintenance and construction worker at various private sector jobs with limited noise exposure. Appellant wore earplugs and mickey mouse ears from 1998 to 2001. It further noted in the year 2000, he worked at the employing establishment and was exposed to noise from aircraft engines and pneumatic tools and was provided double hearing protection. Appellant returned to federal employment in January 2002 where he is employed as an aircraft worker and exposed to noise ranging from 79 to 120 dB. Hearing protection was provided.

OWCP referred appellant and the case record to Dr. Michael Loper, a Board-certified otolaryngologist, for a second opinion evaluation on September 26, 2013. It provided an SOAF addressing appellant's federal work duties as an aircraft worker and the types of employment-related noise he was exposed to. Dr. Loper noted a variation in the SOAF because appellant reported that his federal employment began in the year 2000. Audiometric testing performed that same date revealed the following dB losses at 500, 1,000, 2,000 and 3,000 Hz: 20, 25, 15 and 45 for the right ear and 20, 20, 35 and 65 for the left ear. Dr. Loper reported that appellant's November 2001 audiogram revealed moderate high frequency loss in the left ear and mild high frequency loss in the right ear. In comparing the September 26, 2013 audiogram to the reference audiogram in 2001, he opined that appellant's hearing loss was not in excess of what would normally be predicated on the basis of presbycusis because the change in his hearing was only 15 to 20 dB. Dr. Loper further noted that appellant's workplace exposure was sufficient as to intensity and duration to cause his sensorineural hearing loss, but that the hearing loss in question was not caused by employment-related noise exposure because he had preexisting asymmetrical hearing loss.

By decision dated October 21, 2013, OWCP denied appellant's claim on the grounds that the medical evidence did not support that his hearing loss was causally related to workplace noise exposure.

On October 29, 2013 appellant requested reconsideration of OWCP's decision arguing that his tinnitus was not addressed.

By decision dated November 12, 2013, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

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.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

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.⁴ 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.⁵

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;⁶ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁷ 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.⁸

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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁹

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁵ *See John W. Butler*, 39 ECAB 852, 858 (1988).

⁶ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁷ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁸ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

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.¹⁰

ANALYSIS -- ISSUE 1

It is not disputed that appellant was exposed to hazardous employment-related noise as an aircraft worker. The issue is whether appellant established that he sustained employment-related hearing loss due to noise exposure during his federal employment. The Board finds that this case is not in posture for decision.

The employing establishment referred appellant on May 15, 2013 to the Naval Air Station Hospital for evaluation of his hearing loss. In a May 22, 2013 medical report, Dr. Allstadt, the employing establishment physician, reviewed appellant's employment history, exposure to work-related noise and prior audiograms dating back to November 21, 2001. She diagnosed asymmetrical sensorineural hearing loss and tinnitus, which she opined was caused by his work-related federal noise exposure. Dr. Allstadt noted that the noise exposure was sufficient as to intensity and duration to cause the loss in question and opined that appellant's hearing loss was in excess of what would be predicated on the basis of presbycusis. While she noted that he had bilateral hearing loss at the start of his federal employment in 2001, she argued that his hearing loss was caused by his federal employment because his hearing in the high frequencies gradually declined on composite audiometric history. This decline was bilateral which was typically expected in occupational noise exposure. Dr. Allstadt's report properly followed the procedure manual guidelines pertaining to testing and examination of hearing loss claims.¹¹

OWCP properly followed its procedures and referred appellant for audiological testing and a second opinion examination by Dr. Loper, a Board-certified otolaryngologist.¹²

In a September 26, 2013 second opinion report, Dr. Loper diagnosed sensorineural hearing loss, which he opined was not caused by occupational noise exposure. He noted that appellant had preexisting asymmetrical hearing loss and the change in his hearing over the past 12 years was no worse than presbycusis. Dr. Loper further noted that appellant's workplace exposure was sufficient as to intensity and duration to cause his sensorineural hearing loss, but that the hearing loss in question was not caused by employment-related noise exposure because he had preexisting asymmetrical hearing loss. He stated that the change in appellant's hearing from 2001 to the present was no more than 15 to 20 dB, establishing that his hearing loss was no worse than expected due to presbycusis. Dr. Loper also followed procedure manual guidelines pertaining to audiological testing and medical examination for hearing loss cases.¹³

¹⁰ See *Claudia A. Dixon*, 47 ECAB 168 (1995).

¹¹ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 2.600.8.a (October 1990).

¹² *Id.*, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(b) (January 2013).

¹³ *Supra* note 11.

The Board finds, however, that Dr. Loper's report is not sufficient on the issue of causal relationship. Though he diagnosed bilateral sensorineural hearing loss due to presbycusis, Dr. Loper also found appellant's workplace exposure sufficient as to intensity and duration to have caused the loss in question. His opinion regarding the cause of appellant's hearing loss is equivocal in nature and, thus, of little probative value.¹⁴ Though Dr. Loper reviewed the case record, he failed to address Dr. Allstadt's report who found that appellant's hearing loss was caused by his occupational noise exposure. Furthermore, while he provided an explanation as to why appellant's hearing loss was due to presbycusis, he failed to explain what affect, if any, the occupational noise exposure had on appellant's hearing loss.¹⁵ The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.¹⁶

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.¹⁷ 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.¹⁸ Because it referred appellant to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused by his federal employment.¹⁹ Because Dr. Loper's opinion is equivocal and does not provide a rationalized opinion on the cause of appellant's hearing loss, OWCP should not have relied upon his opinion as a basis for denying appellant's claim for compensation.²⁰

Accordingly, OWCP did not properly discharge its responsibilities in developing the record and the case will be remanded to OWCP for further development of the evidence.²¹ On remand, it should ask Dr. Loper to clarify his opinion on whether appellant's hearing loss was caused or contributed to by the established work-related noise exposure.²² Following this and any other further development deemed necessary, OWCP shall issue an appropriate merit decision on appellant's occupational disease claim.²³

¹⁴ *D.F.*, Docket No. 09-1080 (issued December 7, 2009); *Michael R. Shaffer*, 55 ECAB 386 (2004).

¹⁵ *M.H.*, Docket No. 12-733 (issued September 5, 2012).

¹⁶ *A.D.*, 58 ECAB 149 (2006).

¹⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹⁸ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

¹⁹ *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

²⁰ *See also W.C.*, Docket No. 14-633 (issued June 19, 2014).

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

²² 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).

²³ Given the disposition of the first issue as this case is not in posture for decision, the second nonmerit issue is moot.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 12 and October 21, 2013 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: October 8, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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