

condition on January 1, 2002. Appellant did not become aware of its relation to his federal employment until December 12, 2012. The employing establishment stated that he was last exposed to conditions alleged to have caused his condition on December 26, 1985.

In a January 23, 2013 letter, OWCP advised appellant that the evidence was insufficient to establish his claim. It requested information such as: his federal and nonfederal employment history, his exposure to hazardous noise and previous ear/hearing problems. By letter dated January 23, 2013, OWCP requested that the employing establishment submit information including the job sites where appellant worked, the sources of noise to which he was exposed, the period of exposure and the decibel and frequency of any exposure.

Appellant submitted a November 28, 2012 report from Dr. Thomas C. Logan, Board-certified otolaryngologist, who diagnosed bilateral mild sloping to severe sensorineural hearing loss. Dr. Logan found that compared to appellant's 2006 audiogram, there had been a generalized progression of hearing loss across most frequencies in the right ear and across the higher frequencies in the left ear. He advised that appellant related that his symptoms had been present for several years and he often had to ask people to repeat themselves. Dr. Logan noted that appellant has had a significant history of noise exposure, indicating that he worked at a power plant for 20 years. An accompanying November 28, 2012 audiogram tested decibel losses at 500, 1,000, 2,000 and 3,000 hertz and recorded losses of 10, 15, 30 and 60 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 25, 25, 30 and 55.

In an undated statement responding to OWCP's questionnaire, appellant noted that he was employed by the employing establishment for four months in 1982, 10 months in 1981 and 11 months in 1985. He claimed that he was exposed to hazardous noise from generators, pumps, motors, large fans, release valves, pneumatic tools and conveyor belts without ear protection. Appellant advised that from 1967 to 2000 he was a member of the local 633 pipefitters' union, working at various fossil fuel plants, where he was exposed to the same type of hazardous noise he experienced at the employing establishment.² He noted that he began to wear earplugs in the late 1980's.

In a February 14, 2013 statement, the employing establishment advised that appellant worked intermittently from March 31, 1970 until December 26, 1985 for a total of 2.67 years. It stated that he could have only been exposed to hazardous noise from turbines, pressurizers and grinders for one to two hours a day, five days a week. The employing establishment also noted that noise level surveys indicated readings of 86 to 90 decibels at the site where appellant worked and earplugs were mandatory. It noted that he had audiograms performed on January 14, 1972 and January 6, 1982, both of which showed no ratable hearing loss.

In a February 21, 2013 report, Dr. Eric Puestow, an OWCP medical adviser stated that the medical record did not establish that appellant had a noise-induced hearing loss due to his federal employment.

² Appellant noted that he was not exposed to hazardous noise in his nonfederal positions at J.S. Cottrell Lumber as a lumber stacker, F.A. Ames Company as a furniture manufacturer or PPMI as a mechanical contractor.

OWCP prepared a statement of accepted facts, noting appellant's work history. It listed he had been exposed to noise of 86 to 90 decibels for six to seven hours a day at the employing establishment. OWCP referred appellant to Dr. Andrew Mickler, a Board-certified otolaryngologist. In a March 19, 2013 report, Dr. Mickler reviewed the statement of accepted facts and opined that appellant sustained bilateral sensorineural hearing loss. He concluded that the workplace exposure based on an eight-hour work shift was insufficient to have caused the loss in question. Dr. Mickler noted that appellant was not exposed to noise in excess of the recommended time weighted exposure of 85 decibels for an eight-hour work shift. He noted that there were no audiograms from the beginning or end of appellant's federal employment to compare. However, the audiograms during appellant's employment with the employing establishment showed no measurable hearing loss. Furthermore, Dr. Mickler stated that appellant's work history was intermittent with federal and nonfederal work mingled together.

By decision dated July 22, 2013, OWCP denied appellant's claim. It found that Dr. Mickler did not support that appellant's hearing loss was causally related to the accepted work exposure.

On July 30, 2013 appellant requested an oral hearing which took place on January 22, 2014.

By decision dated April 9, 2014, OWCP's hearing representative affirmed the July 22, 2013 decision. She found that OWCP properly relied on Dr. Mickler's medical report in determining that appellant's hearing loss was not causally related to his federal employment. The hearing representative noted that the exposure data while at the employing establishment did not meet time weighted standard for exposure to hazardous noise. Furthermore, she advised that audiograms at the time of appellant's employment did not demonstrate any ratable loss.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden to establish 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, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established. To establish an occupational disease claim, 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

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.⁶ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

OWCP accepted that appellant was exposed to work-related noise while working as a pipefitter at the employing establishment. In its April 9, 2014 decision, it denied his occupational disease claim finding that the weight of medical opinion rested with Dr. Mickler, an OWCP referral physician, who found that appellant's hearing loss was not causally related to the established employment-related noise exposure. The Board finds that this case is not in posture for decision.

In his November 28, 2012 report, Dr. Logan diagnosed bilateral mild sloping to severe sensorineural hearing loss. He noted that appellant had a significant history of noise exposure, stating that he worked at power plants for 20 years. Although Dr. Logan acknowledged appellant's 20 years of working at a power plant, he failed to adequately address whether he was referring to appellant's federal or nonfederal work experience or explain how workplace noise exposure contributed to his hearing loss. Thus, this report is insufficient to establish an employment-related hearing loss.

OWCP referred appellant to Dr. Mickler for a second opinion. Dr. Mickler's March 19, 2013 report concluded that appellant's federal work history did not cause his hearing loss because he was not exposed to the time weighted limit of 85 decibels for an eight-hour work shift. The Board notes that OWCP's procedure manual states that hearing loss may result from decibel levels below 85 decibels if exposure is sufficiently prolonged.⁸ OWCP does not require that the claimant show exposure to injurious noise in excess of 85 decibels as a condition to approval of the claim.⁹ Dr. Mickler's report is of limited probative value because his medical

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

⁶ *I.J.*, 59 ECAB 408 (2008); *supra* note 4.

⁷ *James Mack*, 43 ECAB 321 (1991).

⁸ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995). See also *C.S.*, Docket No. 10-2030 (issued June 9, 2011).

⁹ *Id.*

opinion on causal relation is not adequately rationalized. He concluded that appellant's hearing loss was not caused by his federal employment because his work history was intermittent with federal and nonfederal work mingled together. Dr. Mickler failed to explain why intermittent exposure up to 90 decibels did not contribute to appellant's hearing loss.¹⁰ He was not provided the audiograms obtained during appellant's employment in 1972 or 1982 for review or comment.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.¹¹ Once OWCP undertakes development of the record it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹² 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.¹³ Because it referred appellant to Dr. Mickler, it has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused or contributed to by his federal employment.¹⁴

On appeal, counsel for appellant argues that Dr. Logan's opinion should be given more weight than Dr. Mickler's opinion or appellant should be referred to a referee physician. The deficiencies in the medical reports of record have been noted.

The case will be remanded to OWCP for further development of the medical evidence. On remand, OWCP requested that the employing establishment submit the 1972 and 1982 audiograms. It should ask Dr. Mickler to clarify his opinion on whether appellant's hearing loss was caused or contributed to by the accepted level of noise exposure. Dr. Mickler should also be asked to provide medical rationale in support of his conclusion.¹⁵ Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

¹⁰ Furthermore, to the extent that Dr. Mickler implies that hearing loss is also caused by nonfederal employment, there is no requirement that the federal employment be the only cause of appellant's hearing loss. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated or accelerated appellant's condition, he is entitled to compensation. See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹¹ *Richard Kendall*, 43 ECAB 790 (1992).

¹² *Phillip L. Barnes*, 55 ECAB 426, 441 (2004).

¹³ *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

¹⁴ See *Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

¹⁵ 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).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the April 9, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.

Issued: October 22, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board