

related to his employment on April 4, 2013. Appellant worked as a boilermaker with the employing establishment for intermittent periods between March 1979 and October 26, 1990, totaling approximately three years.² He was provided with hearing protection but did not always use it.

In a March 20, 2013 report, Dr. William A. Logan, Board-certified in otolaryngology, noted a history of occupational noise exposure. He diagnosed bilateral sensorineural hearing loss and tinnitus. The report included an audiogram dated March 19, 2013; however, the audiogram did not evince that the calibration protocol required by accreditation manual of the American Speech and Hearing Association was followed.

In a report dated July 16, 2013, Dr. Whitney Mauldin, audiologist, related that the employing establishment had requested that she review appellant's records and provide an opinion regarding his hearing loss claim. She noted that he underwent audiometric testing while employed at the employing establishment. Dr. Mauldin determined that appellant's employment at the employing establishment, some 23 years ago, was not the cause of his hearing loss, which was due to presbycusis and nonemployment-related noise exposure.

In order to determine whether appellant sustained a work-related hearing loss, OWCP referred him to Dr. Jack W. Aland, a specialist in otolaryngology, for a second opinion examination.³ In an August 19, 2013 report, Dr. Aland evaluated appellant for bilateral, sensorineural hearing loss. An audiogram dated August 19, 2013, with an attached calibration certificate, showed hearing levels of 20, 20, 45 and 65 decibel (dB) on the right and 15, 20, 40 and 65 dB on the left at 500, 1,000, 2,000 and 3,000 hertz, respectively. Dr. Aland diagnosed bilateral, mild sensorineural hearing loss but noted that appellant had noise exposure at work performed outside of his federal employment. Appellant's prior federal workplace exposure was not sufficient in intensity or duration to have caused the loss in question. In comparing his present audiometric findings to those at the beginning of exposure, he did not show a sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. Dr. Aland noted that appellant had a preexisting hearing loss and wore heavy ear protection during his federal employment. He further advised that appellant's noise exposure at the federal workplace was intermittent over the years.

In an August 22, 2013 report, an OWCP medical adviser, Dr. Eric Puestow, Board-certified in internal medicine, concurred with Dr. Aland's opinion that appellant's bilateral hearing loss was not work related. He noted that the sensorineural loss was not in excess of what would normally be predicted on the basis of presbycusis and that appellant's federal workplace exposure was not sufficient as to intensity or duration to have caused the loss in question.

² In a statement received by OWCP on July 5, 2013, appellant documented the periods between March 1979 and October 1990 in which he worked as a federal employee for the employing establishment, totaling to approximately three years. He also indicated that he worked out of the Boilermakers Union until March 16, 2010 during which time he worked directly for the employing establishment, as well as for contractors at various employing establishment plants.

³ Dr. Aland was provided a statement of accepted facts that listed noise exposure in appellant's federal employment intermittently from March 15, 1979 to October 26, 1990.

Dr. Puestow found that appellant's sensorineural loss was not caused or contributed to by noise exposure in the federal workplace.

By decision dated August 27, 2013, OWCP denied appellant's claim for a schedule award. It found the medical evidence was not sufficient to establish that his hearing loss was caused by noise exposure in his federal employment.

By letter dated September 5, 2013, appellant, through his attorney, requested an oral hearing, which was held on February 18, 2014. At the hearing, he testified that he began his employment with the employing establishment at the Hartsville Nuclear Plant on March 12, 1979, where it was continuously noisy, with motors and pumps running and people beating and banging on hammers and grinding. Appellant worked 5 to 7 days a week, 8 to 12 hours per day and earplugs were not provided to him. He also worked at the employing establishment's Widow's Creek Plant, where he was continuously exposed to the same noise; hammering and motors running, steam discharging, conveyor belts running, grinding, turbines and large fans. Appellant worked 5 to 7 days a week, 8 to 10 hours per day and sometimes, but infrequently, wore earplugs. He also worked at the Sequoyah Nuclear Plant, with similar hours and days, where he wore earplugs.

In a January 9, 2014 report, Dr. Logan stated that appellant had a bilateral sensorineural hearing loss and that his history and the pattern of hearing loss were consistent with cumulative exposure to loud noise. He stated that appellant's exposure at the employing establishment likely contributed to his hearing loss. Based on the March 19, 2013 audiogram results, appellant had a ratable hearing loss of 22.50 percent in the right ear and 16.90 percent in the left ear, for a binaural hearing loss of 17.8 percent, pursuant to the A.M.A., *Guides*.

In a statement dated March 17, 2014, the employing establishment rebutted several statements that appellant made at the hearing. It denied his assertion that no hearing protection was provided during his employment at Hartsville, which was contradicted by a March 13, 1979 outpatient record stating "small comfits issued." The employing establishment stated that comfits were the standard hearing protection issued at the time of appellant's employment. It also disagreed with his statement that work at Sequoyah Nuclear Plant was "deafening all the time." The employing establishment stated that appellant neglected to mention that, during the time he worked at this plant, there were equipment outages; during which the equipment on which he worked was not in operation. It asserted that he incorrectly stated that he first noticed his hearing loss in 1991, which was contradicted by his February 22, 1978 preemployment audiometric examination, which showed that he had a preexisting hearing loss caused by exposure to noise in his nonfederal employment.

By decision dated April 28, 2014, an OWCP hearing representative affirmed the August 27, 2013 decision. She found that Dr. Logan's opinion was not based on a full or accurate history of appellant's exposure to noise in his federal employment.

LEGAL PRECEDENT

An employee seeking compensation under FECA⁴ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,⁵ including that he or she is an employee within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁶ The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.⁷

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.⁸

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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. 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.⁹

OWCP procedures set forth requirements for the medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology and that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings. Further, all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores. The otolaryngologist's report is to include: date and hour of examination, date and hour of employee's last exposure to load

⁴ See *supra* note 1.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ See *M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); see 5 U.S.C. § 8101(1).

⁷ *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); see 5 U.S.C. § 8122.

⁸ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.¹⁰ The physician should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe that the claimant is malingering.¹¹

ANALYSIS

The issue is whether appellant's hearing loss was caused or contributed to by exposure to noise in his federal employment. The record reflects that he was exposed to noise in the course of federal employment for intermittent periods between March 15, 1979 and October 26, 1990, totaling approximately three years.

Appellant submitted Dr. Logan's March 19, 2013 report, with audiogram, as well as results of audiometric testing performed from February 1978 to January 1991. Dr. Logan's report, however, offered no opinion regarding the cause of his hearing loss. Further, the diagnostic testing obtained for Dr. Logan did not provide proper certification of calibration.

Dr. Mauldin opined that appellant's hearing loss was not work related. To the extent that she offered a medical opinion, she is not a physician and her opinion is of no probative medical value.¹² Following the initial denial of the claim, Dr. Logan submitted a January 9, 2014 supplemental statement. He opined that appellant had bilateral sensorineural hearing loss, consistent with cumulative exposure to loud noise and that his work at the employing establishment "likely" contributed to his hearing loss. The Board finds that Dr. Logan did not adequately address how the specific factors of appellant's federal employment, based upon an accurate employment history, caused or contributed to his hearing loss. Dr. Logan's opinion is couched in speculative terms, not fully rationalized and is of limited probative value.

The Board finds that the weight of medical opinion is represented by Dr. Aland, the referral specialist. In his August 20, 2013 report, Dr. Aland found that the August 19, 2013 audiogram showed bilateral, mild sensorineural hearing loss but not related to industrial noise exposure. He noted that appellant had noise exposure from work performed outside of his federal employment and stated that the accepted workplace exposure was not sufficient in intensity or duration to have caused the loss in question. Dr. Aland stated that, in comparing his present audiometric findings to those at the beginning of exposure, appellant did not show a sensorineural loss in excess of what would normally be predicted on the basis of presbycusis.¹³ He noted that appellant had a preexisting hearing loss and wore heavy ear protection during his

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹¹ *Luis M. Villanueva*, 54 ECAB 666 (2003). See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995).

¹² See 5 U.S.C. § 8101(2) (defines the term physician); *M.P.*, Docket No. 13-1790 (issued December 17, 2013) (an audiologist is not a physician under FECA and the audiologist's opinion regarding the medical cause of a claimant's hearing loss is of no probative medical value).

¹³ As noted above, it is appellant's burden to submit a properly certified audiogram for review if he objects to the audiogram selected by OWCP for determining the degree of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

federal employment. Dr. Aland noted that his noise exposure at the federal workplace was intermittent over the years.

While the record contains other audiometric results, none were accompanied by a physician's rationalized-medical opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. OWCP is not required to rely on this evidence in determining the degree of his hearing loss because it does not constitute competent medical evidence and therefore is insufficient to satisfy his burden of proof.¹⁴

On appeal, appellant's attorney argues that appellant sustained a binaural hearing loss causally related to noise exposure in his federal employment and is entitled to a schedule award. He asserts that Dr. Aland's opinion was flawed because he did not take into account the fact that appellant worked for seven months after the last audiogram he underwent at the employing establishment or that he was exposed to 96 dB of noise, which exceeds the 85 dB OSHA standard. Counsel contends that, at the very least, OWCP should have found a conflict in medical opinion between Dr. Aland and Dr. Logan which warranted referral to an impartial medical specialist. As noted above, the Board finds Dr. Logan's opinion lacked probative weight.

Dr. Aland provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to noise exposure in appellant's employment. He was provided an accurate statement of accepted noise exposure and contrasted audiometric test performed on August 19, 2013 with the prior audiograms of record. Dr. Aland concluded that noise exposure did not contribute to his mild sensorineural loss, which was attributed to presbycusis.

The Board finds that OWCP properly determined that Dr. Aland's opinion that appellant did not establish a bilateral hearing loss causally related to his employment-related noise exposure represents the weight of the evidence. Dr. Aland conducted a thorough examination and provided a reasoned opinion explaining how the findings on examination and testing of appellant's right and left ear were not due to the noise in his employment. The medical adviser, concurred with Dr. Aland's August 20, 2013 opinion. The Board will affirm OWCP's April 28, 2014 decision.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that his bilateral sensorineural hearing loss was causally related to his federal employment.

¹⁴ *Holmes, id.*

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 29, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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