



## **FACTUAL HISTORY**

This case has been previously before the Board.<sup>2</sup> In an order issued on May 13, 2013, the Board remanded this case as OWCP had failed to consider the October 4, 2011 medical report of Dr. R. Kirk Bohigian, a Board-certified otolaryngologist, finding that appellant's hearing loss had been medically evaluated and that appellant may be considered a candidate for hearing aids. The facts as set forth in the Board's prior order are hereby incorporated by reference.<sup>3</sup>

By letters dated June 28 and July 30, 2013, OWCP asked Dr. Bohigian to review the May 5, 1976 report of Dr. Robert W. Clubb, a Board-certified otolaryngologist, regarding the accepted hearing loss for appellant. It asked Dr. Bohigian to provide a well-rationalized and probative report as to how appellant's need for hearing aids would be causally related to his date of injury.

In a July 9, 2013 responsive report, Dr. Bohigian conducted a new examination and audiogram and assessed appellant with sensorineural hearing loss in both ears and cerumen impaction. Dr. Bohigian stated:

“In summary my impression is that [appellant] has a bilateral moderate to moderately severe sensorineural hearing loss in both ears by serial audiometric testing when compared to an audiogram performed in October 2011. There is no clinical evidence of any otologic inflammatory disease. His external auditory canals were cleaned of cerumen using the operating microscope. He has history of significant noise exposure as a result of his work [for the employing establishment] where he was employed from 1942-1973.”

He indicated that he provided appellant with medical clearance for binaural amplification with hearing aids which he will consider for his sensorineural hearing loss. Dr. Bohigian recommended a follow-up evaluation with audiometric testing in two years or sooner if needed.

In an October 10, 2013 decision, OWCP denied appellant's claim as it determined that the medical evidence failed to establish a causal relationship between appellant's medical condition and the accepted work events. In reaching this conclusion, it noted that Dr. Bohigian found a decrease of approximately 10 decibels in appellant's sensorineural hearing loss in both ears and quoted Dr. Bohigian as stating, *inter alia*:

“This decrease is clearly as a result of the natural aging process in the inner ear known as [*p*]resbycusis and evidenced in the results of the exam[ination]s which

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<sup>2</sup> By September 23, 1976 decision, the Board affirmed in part a July 2, 1976 OWCP decision, finding that appellant had no more than a 10 percent employment-related binaural hearing loss, for which he received a schedule award. The Board remanded the case for further development of the pay rate and medical benefit issues. *See* 27 ECAB 680 (1976).

<sup>3</sup> *Order Remanding Case*, Docket No. 12-1907 (issued May 13, 2013). On September 1, 2012 appellant, then a 52-year-old position classification specialist, alleged that he sustained occupational loss of hearing due to exposure to loud and injurious noise. He previously received a schedule award for 10 percent bilateral neurosensory hearing loss.

were performed 20 months apart without any significant noise exposure.”  
(Emphasis in the original.)

### **LEGAL PRECEDENT**

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.<sup>4</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA with the only limitation on OWCP’s authority being that of reasonableness.<sup>5</sup>

### **ANALYSIS**

OWCP previously accepted appellant’s claim for binaural hearing loss due to noise exposure. It denied appellant’s request because Dr. Bohigian had failed to support his recommendation for hearing aids with sufficient rationale on causal relationship. In the decision, however, OWCP attributed a conclusion to Dr. Bohigian that was not in his report. “This decrease is clearly a result of the natural aging process in the inner ear known as presbycusis....” Dr. Bohigian concluded, *inter alia*, “[Appellant] has a history of significant noise exposure as a result of his work in the [employing establishment] where he was employed from 1942 [to] 1973.” He added that he had medically cleared appellant for “binaural amplification with hearing aids.” The Board concludes that the statement OWCP attributes to Dr. Bohigian is in error.

The issue to be resolved was whether appellant was entitled to hearing aids as a result of his employment-related binaural loss of hearing. OWCP’s error in attributing a quote to Dr. Bohigian that he never made in any report in the record requires that this Board remand the case to OWCP once again to reconsider the medical evidence in addressing the unresolved issue of whether appellant is entitled to hearing aids due to his employment-related binaural hearing loss. Accordingly, this case will be remanded to OWCP for this purpose.<sup>6</sup> After such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant’s entitlement to hearing aids.

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<sup>4</sup> 5 U.S.C. § 8103; *see Thomas W. Stevens*, 50 ECAB 288, 289 (1999).

<sup>5</sup> *James. R. Bell*, 52 ECAB 416 (2001); *see also J.C.*, Docket No. 13-1413 (issued October 22, 2013).

<sup>6</sup> On appeal appellant asks this Board to “reaffirm the November 7, 2011 decision of the Boston Office, entitling me to hearing aids at the expensive of OWCP....” He appears to be referring to a November 7, 2011 letter to appellant’s senator wherein OWCP indicated that appellant was entitled to hearing aids at OWCP’s expense. This letter is not a formal decision; no decision was ever issued granting appellant’s request for hearing aids. The Board’s jurisdiction is limited to deciding appeals from final adverse decisions of OWCP in cases arising under FECA. *See* 20 C.F.R. §§ 501.2(c) and 501.3(a).

**CONCLUSION**

The Board finds that this case is not in posture for decision as to whether OWCP properly denied authorization for hearing aids.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 10, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: September 19, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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