

the claim for bilateral hearing loss. Appellant last worked for the employing establishment in May 1979. By decision dated April 24, 1981, OWCP awarded him a schedule award for a 20 percent binaural hearing loss. The period of the award ran from December 4, 1980 to September 9, 1981.

The record reflects that under this claim number, on August 1, 1983 OWCP determined appellant's wage-earning capacity as a hotel clerk, effective September 10, 1981.

In decisions dated July 2 and October 21, 2010, OWCP denied appellant's claim for an increased schedule award after finding that the medical evidence was insufficient to show a greater hearing loss causally related to factors of his federal employment. It noted that he was last exposed to hazardous noise in his federal employment in May 1979. On March 28, 2011 OWCP denied appellant's request to reopen his case for further merit review. By decision dated March 1, 2012,² the Board affirmed the March 28, 2011 nonmerit decision denying appellant's request for reconsideration. The Board found that the issue of whether he sustained additional employment-related hearing loss was a medical issue that must be addressed by relevant medical evidence.

On November 5, 2012 appellant requested reconsideration of OWCP's October 21, 2010 decision. OWCP referred appellant to Dr. Bibhas C. Bandy, a Board-certified otolaryngologist. In his November 12, 2012 report, Dr. Bandy reviewed an audiogram taken on the date of examination, the medical evidence of record and a statement of accepted facts dated May 24, 2005. He stated that appellant developed a bilateral hearing loss in gradual fashion due to his loud noise exposure at work during the period 1972 to 1991, when he worked for the Department of Agriculture in Beltsville, Maryland as a laborer; he advised that his hearing loss was somewhat worse since 1991. Dr. Bandy found that appellant had bilateral moderate to profound sensorineural hearing loss, most likely due to previous noise trauma superimposed on presbycusis; *i.e.*, age. He opined that the increase in appellant's hearing loss was due to presbycusis and would progress with age.

In a December 6, 2012 report, an OWCP medical adviser reviewed Dr. Bandy's report and found that appellant was not entitled to an additional schedule award. He noted that Dr. Bandy had opined that appellant's increased hearing loss was due to presbycusis, *i.e.*, age, and he noted that once noise exposure ceases, hearing loss due to noise exposure also ceases.

By decision dated January 10, 2013, OWCP denied his request for reconsideration as it was untimely filed and did not demonstrate clear evidence of error.

By letter dated March 25, 2013, appellant requested reconsideration. He argued that he did not stop work in 1979 but continued working in federal employment until 1991 "under the same conditions." Appellant further asserted that he had additional hearing loss. He stated that OWCP had referred him for a second opinion examination in 2012 but inaccurately informed Dr. Bandy that he had not worked since 1980.

² Docket No. 11-1521 (issued March 1, 2012) (*petition for recon. denied*, July 24, 2012).

By decision dated April 25, 2013, OWCP denied his request for reconsideration, finding that it was untimely filed and did not demonstrate clear evidence of error.

In a February 3, 2014 decision,³ the Board set aside OWCP's April 25, 2013 decision. The Board found that OWCP erred in finding that appellant's application for an additional schedule award was a request for reconsideration and in issuing a denial of appellant's request for reconsideration under the clear evidence of error standard. The Board noted that a claimant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.⁴ The complete facts of this case are set forth in the Board's February 3, 2014 decision and are herein incorporated by reference.

By letter dated February 10, 2014, OWCP requested that appellant provide additional factual and medical evidence. It asked him to document his employment history for the period May 1979 to March 1990, along with any documentation supporting any period of federal civilian employment during that period. OWCP also requested that appellant provide information pertaining to any outside sources of excessive noise to which he may have been exposed and submit an updated medical report issued since his most recent July 2010 report.

In response to OWCP's letter, appellant resubmitted evidence previously of record, including: (1) a copy of a June 2, 1980 occupational disease claim for hearing loss and a July 28, 1980 response to an OWCP request for additional information; (2) a personnel Form SF-50 indicating his appointment as a warehouse worker in Fort Bragg effective February 26, 1990; (3) a personnel Form SF-50 indicating his termination as a tractor operator for the Department of Agriculture, effective October 6, 1991, which included his statement that he worked around loud noise and a position description for an air tool operator with the same statement; (4) a copy of a March 21, 1983 OWCP letter to a physician; (5) a 1982 letter from a previous employing establishment to OWCP; and (6) a September 9, 1983 OWCP letter.

New evidence included a December 19, 2012 report from Dr. Kirk D. Williams, a Board-certified otolaryngologist. He stated that appellant's condition was unchanged. Dr. Williams asserted that there was no change in his hearing status since December 4, 2009 with regard to his chronic bilateral and symmetrical sensorineural hearing loss. He advised that appellant's hearing loss continued to limit his physical activity and his ability to perform the duties of an air tool operator because of an inability to hear adequately, the hearing loss was permanent and, therefore, there was no chance of recovery. Dr. Williams stated that there was no specific treatment plan at that point, including medications, and he recommended that appellant continue to use hearing aids. In a March 6, 2014 report, he reiterated the findings and conclusions he presented in his December 19, 2012 report.

Appellant also submitted a February 28, 2014 report containing an audiometric evaluation showing that he had bilateral hearing loss.

³ Docket No. 13-1812 (issued February 3, 2014).

⁴ See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994).

By decision dated May 1, 2014, OWCP denied appellant's claim for an additional schedule award, finding that he had failed to establish additional hearing loss causally related to his federal employment.

LEGAL PRECEDENT

FECA provides compensation for both disability and physical impairment. "Disability" means the incapacity of an employee, because of an employment injury, to earn the wages the employee was receiving at the time of injury.⁵ In such cases, FECA compensates an employee for loss of wage-earning capacity. In cases of physical impairment, FECA, under section 8107(a), compensates an employee, pursuant to a compensation schedule, for the permanent loss of use of certain specified members of the body, regardless of the employee's ability to earn wages.⁶

A claimant seeking compensation 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, it is thus the claimant's burden of proof to establish that he or she sustained a permanent impairment of a scheduled member or function as a result of his or her employment injury entitling him or her to a schedule award.⁷ The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between his current condition and the employment injury.⁸ The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain from a medical perspective how the current condition is related to the injury.⁹

The requirements of the evidence to be used in evaluating occupational hearing-loss claims require that the employee undergo audiological evaluation and otological examination; that the audiological testing precede the otologic examination; that the audiological evaluation and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that the clinical audiologist and otolaryngologist be certified; that 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; and that the otolaryngologist's report include the date and hour of examination, date and hour of the employee's last exposure to loud noise, and a rationalized medical opinion regarding the relationship.¹⁰

⁵ *Lyle E. Dayberry*, 49 ECAB 369 (1998).

⁶ *Renee M. Straubinger*, 51 ECAB 667 (2000).

⁷ *See Raymond E. Gwynn*, 35 ECAB 247 (1983).

⁸ *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

¹⁰ *See Joshua Holmes*, 42 ECAB 231 (1990).

ANALYSIS

The Board finds that the evidence does not establish that appellant sustained additional hearing loss causally related to his federal employment. In its February 10, 2014 letter, OWCP requested that he provide evidence of additional noise exposure from federal employment during the period May 1999 and continuing. Appellant, however, did not submit any additional factual documentation establishing an additional period of federal employment.

In his November 14, 2012 report Dr. Bandy examined appellant and an audiogram was obtained on the physician's behalf. He found, using OWCP's standard procedures, that appellant had additional hearing loss and that his hearing loss was increasing. Dr. Dandy attributed this to appellant's employment up to 1991, and thereafter to presbycusis. He noted that appellant had told him that he had worked for the Department of Agriculture in Beltsville, Maryland as a laborer from 1972 to 1991. This assertion was not supported by the record. In a December 6, 2012 report, an OWCP medical adviser found that appellant was not entitled to an additional schedule award. He noted that Dr. Bandy had opined that appellant's increased hearing loss was due to presbycusis, *i.e.*, age.

The Board finds that the opinion of Dr. Bandy, as reviewed by the medical adviser, represents the weight of the medical evidence. Appellant has failed to establish that his increased hearing loss was due to his federal employment.

Further, Dr. Williams offered no opinion as to whether any of appellant's increasing hearing loss was due to his federal employment. He did not provide any rationale, supported by objective evidence, of any worsening due to federal civilian employment.

The February 28, 2014 audiometric evaluation showed that appellant had a bilateral hearing loss, but did not contain an opinion from a physician regarding the cause of his hearing loss or proper certification of calibration. Therefore, this report is lacking in probative value.¹¹

Accordingly, appellant has not established increased hearing loss due to noise exposure in his federal employment. He, therefore, has failed to establish that he is entitled to a schedule award for more than the 20 percent he was previously awarded.

On appeal, appellant claims that he sustained increased hearing loss due to noise exposure for the period May 1979 through March 1990 and throughout his federal employment. He reiterates the arguments he raised in numerous letters and statements submitted to OWCP and the Board, which have been thoroughly considered on appeal.

Appellant can file a claim before OWCP for an increased schedule award under the appropriate file number based on medical evidence showing that the progression of an

¹¹ 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. *See Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

employment-related condition, without exposure to new employment factors, has resulted in a greater impairment than previously calculated.¹²

CONCLUSION

The Board finds that appellant has not established that he is entitled to an additional schedule award for hearing loss due to noise exposure at his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 1, 2014 is affirmed.

Issued: April 28, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹² See *Tommy R. Martin*, 56 ECAB 273 (2005); *Linda T. Brown*, 51 ECAB 115 (1999).