



## **FACTUAL HISTORY**

On May 19, 2014 appellant, then a 66-year-old nuclear coordinator, filed an occupational disease claim alleging bilateral hearing loss. He first became aware of his bilateral hearing loss on January 1, 2012 and first realized that his condition was caused by loud noise at work that same day. Appellant retired from the employing establishment effective August 30, 1996.

By letter dated June 25, 2014, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit factual and medical evidence. OWCP also requested that the employing establishment respond to appellant's allegations and provide a copy of all medical examinations pertaining to his hearing or ear problems, including any preemployment examinations and audiograms.

Appellant submitted employment records which included, among other things, a history of his workplace exposure to noise and chemicals from May 1966 to August 1990 and his use of earplugs. He also submitted employing establishment audiograms performed from August 19, 1974 to August 22, 1994 as part of a hearing conservation program and audiograms performed by certified audiologists on April 30, 2013 and May 5, 2014.

In a May 12, 2014 medical report, Dr. Harley Kinyon, a certified audiologist, noted appellant's complaint about difficulty understanding conversation in background noise, nearly constant tinnitus, and difficulty locating source of sound. He recommended a hearing aid. Dr. Kinyon noted appellant's belief that his hearing loss was caused by noise exposure at the employing establishment.

In a July 18, 2014 memorandum, the employing establishment provided a history of appellant's exposure to noise while working as a machinist and machinist foreman from August 20, 1974 to August 30, 1996. It noted its policy requiring workers to use hearing protection. The employing establishment stated that appellant was a foreman/supervisor who spent approximately 50 percent of his time in office environments with noise levels below 80 decibels.

In a letter dated September 16, 2014, OWCP referred appellant, together with a statement of accepted facts and medical record, for a second opinion evaluation with Dr. Thomas J. Mueller, a Board-certified otolaryngologist. In an October 15, 2014 report, Dr. Mueller noted that he evaluated appellant for bilateral sensorineural hearing loss. An audiogram also dated October 15, 2014, with an attached calibration certificate, showed hearing levels of 5, 5, 5, and 10 decibels (dB) on the right and 10, 10, 25, and 45 dB on the left at 500, 1,000, 2,000, and 3,000 hertz, respectively. Dr. Mueller set forth findings on examination and diagnosed asymmetric sensorineural hearing loss. He advised that appellant's condition was not due to noise exposure in his federal employment. Dr. Mueller stated that, the hearing loss at the time he left the employing establishment showed a mild hearing loss in some of the upper frequencies, but no demonstrable hearing loss on the right side at any frequency. He recommended a magnetic resonance imaging scan of the left internal auditory canal to assure no space occupying lesion which was not related to workplace exposure. In comparing his present audiometric findings to those at the beginning of exposure, Dr. Mueller advised that appellant had an asymmetric high frequency sensorineural hearing loss beginning at two kilohertz. He noted that this had been a

progressive hearing loss since appellant left the shipyard and was not due to occupational noise exposure. Dr. Mueller advised that the workplace exposure as described by appellant was not of sufficient intensity and duration to have caused the hearing loss in question on today's audiogram. He further advised that appellant had no emotional disorder, systemic diseases such as, diabetes, local infections, or ototoxic drug use, or surgery that could have contributed to the hearing loss in question.

In an October 28, 2014 decision, OWCP denied appellant's hearing loss claim, finding that the medical evidence did not establish that his hearing loss was causally related to the accepted employment-related noise exposure.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA<sup>2</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,<sup>3</sup> 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.<sup>4</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>5</sup>

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.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.<sup>7</sup>

OWCP procedures set forth requirements for the medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic

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<sup>2</sup> *Id.*

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *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).

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

<sup>6</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *See I.J.*, 59 ECAB 408 (2008); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

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 loud 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.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The record supports that appellant was exposed to occupational noise as a machinist and machinist foreman from August 20, 1974 to August 30, 1996. The Board finds, however, that the medical evidence does not establish that his hearing loss is causally related to the accepted employment-related noise exposure.

Appellant submitted audiograms performed by the employing establishment from August 19, 1974 to August 22, 1994 as part of a hearing conservation program and by certified audiologists on April 30, 2013 and May 5, 2014. These audiograms are insufficient to establish appellant's burden of proof as they do not comply with the requirements set forth under OWCP. They lack proper certification of calibration, speech testing, and bone conduction scores and were not prepared or certified as accurate by a physician as defined by FECA. The audiograms were not accompanied by a physician's opinion addressing how appellant's employment-related noise exposure caused or aggravated any hearing loss. It is appellant's burden to submit a properly prepared and certified audiogram to OWCP.<sup>10</sup> OWCP was not required to rely on this evidence in determining the degree of appellant's hearing loss as it failed to constitute competent medical evidence.<sup>11</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *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).

<sup>10</sup> See *R.B.*, Docket No. 10-1512 (issued March 24, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004); *Joshua A. Holmes*, 42 ECAB 231, 236 (1990) (OWCP does not have to review audiograms not certified by a physician and it is the claimant'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 also *J.B.*, Docket No. 12-607 (issued August 9, 2012); 5 U.S.C. § 8101(2) (defines the term physician).

<sup>11</sup> *Id.* See also *H.M.*, Docket No. 13-1061 (issued July 29, 2013); *M.T.*, Docket No. 12-1294 (issued December 6, 2012).

The May 12, 2014 report from Dr. Kenyon, an audiologist, has no probative medical value because an audiologist is not a physician as defined under FECA.<sup>12</sup>

The Board finds that the weight of medical opinion is represented by Dr. Mueller, the OWCP second opinion specialist. In his October 15, 2014 report, Dr. Mueller advised that the audiogram of the same date showed asymmetric sensorineural hearing loss, but not related to industrial noise exposure. He stated that, in comparing his present audiometric findings to those at the beginning of exposure, appellant had an asymmetric high frequency sensorineural hearing loss beginning at two kilohertz. Dr. Mueller related that this hearing loss had progressed since he left the employing establishment, but concluded that it was not due to noise exposure in his federal employment. He noted that at the time appellant left the employing establishment he had a mild hearing loss in some of the upper frequencies on the left side, but no demonstrable hearing loss on the right side at any frequency. Dr. Mueller opined that his workplace exposure was not of sufficient intensity and duration to have caused the hearing loss in question on the current audiogram.<sup>13</sup> The Board finds that Dr. Mueller's opinion establishes that appellant did not meet his burden of proof to show that he sustained hearing loss due to exposure to noise in the workplace.<sup>14</sup>

On appeal, appellant contended that he sustained hearing loss in the left ear causally related to noise exposure in his federal employment. As discussed, however, the audiograms and Dr. Kinyon's report he submitted in support of his claim do not constitute probative medical evidence. Appellant disagrees with Dr. Mueller's opinion that his workplace exposure was not of sufficient intensity to have caused his hearing loss, noting that he worked as a machinist for 15 years in one of the loudest shops. However, as explained above, Dr. Mueller 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 testing performed on October 15, 2014 with the prior audiograms of record. Dr. Mueller concluded that noise exposure did not contribute to appellant's asymmetric sensorineural hearing loss.

### CONCLUSION

The Board finds that appellant has not established that his bilateral sensorineural hearing loss was causally related to his federal employment.

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<sup>12</sup> 5 U.S.C. § 8101(2); *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).

<sup>13</sup> 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, supra* note 10.

<sup>14</sup> See *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

**ORDER**

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

Issued: April 8, 2015  
Washington, DC

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

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

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