

and tinnitus in the performance of duty. He first became aware of his condition and its relation to his federal employment on April 30, 1993. Appellant retired on May 3, 1993.

In a February 10, 2014 statement, appellant detailed his federal work history. He noted that from 1957 to 1968 he served as a machinist in the U.S. Navy. Appellant stated that he was exposed to the noise of steam valves for eight hours a day without hearing protection. He advised that he worked at the employing establishment from 1968 to 1973 as a marine machinist. Appellant advised that he was exposed to noise from the waterfront, chippers, grinders, deck crawlers, pneumatic tools, steamers, and ventilators for eight hours a day with hearing protection. Lastly, he noted that from 1973 to 1993 he was employed at the employing establishment as a nuclear engineering technician. Appellant stated that he was exposed to noise from the waterfront, ship checks, and the office environment. He advised that he used hearing protection.

In a November 6, 2013 report, Dr. Richard Seaman, Board-certified in otolaryngology, noted that appellant complained of hearing loss and tinnitus. He advised that appellant related that he first noticed his hearing loss in 1993 when he retired from the employing establishment. Appellant related that he believed his hearing loss was employment related. Dr. Seaman detailed appellant's employment history and noise exposure and noted that from 1973 to 1993 appellant was not exposed to as much noise as he was in his first five years as a machinist. He diagnosed sensorineural hearing loss and tinnitus. Dr. Seaman opined that appellant's hearing loss was a combination of occupational noise damage and presbycusis. He noted that he did not review any occupational testing of appellant's hearing. An accompanying November 6, 2013 audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 5, 15, 5, and 25 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 5, 10, 30, and 40.

By letter dated March 20, 2014, OWCP requested that the employing establishment provide comment on the statements made by appellant in regard to his claim. In an April 2, 2014 statement, the employing establishment confirmed his work history and advised that a report would be sent to OWCP describing the source, period of exposure to noise, frequency level, and hearing protection used. It noted that annual monitoring under the hearing conservation program was required for appellant's machinist and nuclear engineer positions. The employing establishment advised OWCP of the sound level ranges in the areas where he worked.

The employing establishment also forwarded to OWCP annual audiograms it performed as a part of its hearing conservation program. When appellant began at the employing establishment in 1968 an audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 0, 0, 0, and 10 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 0, 0, 0, and 45. A March 31, 1993 occupational audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 10, 15, 5, and 25 in the left ear and decibel losses of 10, 10, 15, and 55 in the right ear.

On July 17, 2014 OWCP referred appellant, together with the medical record and a statement of accepted facts, to Dr. Thomas Mueller, Board-certified in otolaryngology, for a second opinion. In an August 20, 2014 report, Dr. Mueller advised that appellant related that he had been experiencing hearing loss for years. He noted that appellant experienced his most

significant exposure in the first five years of working for the employing establishment. On physical examination, Dr. Mueller found that the ear canals showed no tympanic membrane retractions, granulations, or debris pockets and no middle ear fluid. He diagnosed down sloping sensorineural hearing loss with the right side loss being greater than the left. Dr. Mueller further noted that in 1968 appellant was already experiencing high frequency hearing loss at 3,000, and 4,000 hertz on the right and that the left ear was normal at that time. He opined that appellant's hearing loss was not due to noise exposure from his federal employment. Dr. Mueller advised that workplace noise may have been significant early on, but with hearing protection and the short nature of the loud noise exposure from 1968 to 1973, he did not think that his hearing was affected by such exposure. He explained that, since appellant was working, his hearing slowly diminished in the upper frequencies in both ears and now the hearing loss appeared in lower frequencies, which was indicative of age-related change and not workplace noise exposure. An accompanying August 20, 2014 audiogram tested decibel losses at 500, 1,000, 2,000, and 3,000 hertz and recorded losses of 20, 40, 20, and 50 in the left ear. Testing at the same levels for the right ear recorded decibel losses of 20, 25, 45, and 70.

By decision dated September 2, 2014, OWCP denied appellant's claim because the medical evidence was insufficient to establish that his hearing loss was causally related to workplace noise exposure.

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.² 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.³

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 compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁴

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

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

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.⁵ 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.⁶

ANALYSIS

It is not disputed that appellant was exposed to work-related noise while working as a machinist and later as a nuclear engineering technician at the employing establishment. In its September 2, 2014 decision, OWCP denied his occupational disease claim finding that the medical evidence was insufficient to establish that his hearing loss was causally related to workplace noise exposure. The Board finds that appellant has not established that he sustained hearing loss causally related to his federal employment.

To further develop the claim, OWCP referred appellant to Dr. Mueller for a second opinion evaluation. In his August 20, 2014 report, Dr. Mueller opined that appellant's hearing loss was not due to noise exposure from his federal employment. He explained that, while appellant may have had significant workplace noise exposure from 1968 to 1973, he did not think that appellant's hearing was affected by this exposure due its relatively short nature and appellant's use of hearing protection. Dr. Mueller advised that, while working, appellant's hearing slowly diminished in the upper frequencies in both ears and later appeared in lower frequencies which was indicative of age-related change and not a change due to workplace noise. He found no basis to attribute appellant's hearing loss to his workplace noise exposure.

Appellant has not submitted sufficient medical opinion evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure. In his November 6, 2013 report, Dr. Seaman opined that appellant's hearing loss was a combination of occupational noise damage and presbycusis. He noted that he had not reviewed any occupational testing of appellant's hearing. This report is insufficient to discharge appellant's burden of proof because it is not based on a complete factual and medical background. Dr. Seaman acknowledged that he did not review any of appellant's prior occupational audiograms.⁷ This report is also insufficient to discharge appellant's burden of proof because it is not supported by any medical rationale explaining why work-related noise exposure that ceased in 1993 would cause or aggravate his current condition. In contrast, Dr. Mueller reviewed appellant's previous audiograms of record and explained that the pattern of hearing loss shown in his audiograms was consistent with age-related hearing loss and not noise exposure.

⁵ *I.J.*, 59 ECAB 408 (2008); *supra* note 3.

⁶ *James Mack*, 43 ECAB 321 (1991).

⁷ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history have little probative value).

The Board finds that the weight of the medical evidence does not establish that appellant's hearing loss was caused or aggravated by work-related noise exposure. Accordingly, the Board finds that he did not establish his claim.

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.⁸

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss causally related to factors of his employment.

ORDER

IT IS HEREBY ORDERED THAT the September 2, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2015
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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

⁸ Appellant submitted new evidence to the Board on appeal after issuance of the September 2, 2014 decision. However, the Board lacks jurisdiction to review evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).