United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 15-0812**
	)	**Issued: June 25, 2015**
DEPARTMENT OF THE ARMY, ANNISTON ARMY DEPOT, Anniston, AL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On February 26, 2015 appellant filed a timely appeal from a January 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained bilateral hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On October 10, 2014 appellant, then a 52-year-old heavy mobile equipment operator, filed an occupational disease claim alleging bilateral hearing loss causally related to factors of

[1] 5 U.S.C. § 8101 *et seq.*

his federal employment. He first became aware of his condition and its relationship to his employment on October 9, 2007. Appellant did not stop work.

Appellant described his work history at the employing establishment from March 2002 to the present. He related that he was exposed to noise from hammers, grinders, impact wrenches, chisels, and torches. From 2007 to 2014 appellant worked 5 to 6 days a week and 11 hours a day. He wore hearing protection.

The employing establishment submitted copies of audiograms dated March 18, 2002 to September 16, 2013 obtained as part of a hearing conservation program. On October 9, 2007 its medical director advised that appellant's "hearing acuity has worsened significantly" since his "hearing baseline was determined." In a report dated November 6, 2007, an audiologist found mild high-frequency hearing loss of the left ear with a pattern "consistent with noise exposure," or more particularly exposure to gun fire.

On October 2, 2014 the employing establishment provided appellant's noise exposure data. It indicated that he had 85 decibels (dB) of noise exposure daily and noted that his "claim covers an expanse of 12 years from 2002 to 2014." In an undated weighted noise exposure average, it specified that appellant was exposed to an average of 88 dB from 2002 to 2005, 82.2 dB from 2005 to 2007, and 93.6 dB from 2007 to 2014.

In a statement received on November 18, 2014, appellant related that he continued to be exposed to noise at work, that he wore hearing protection, and that he had no hobbies which involved exposure to significant noise.

On December 12, 2014 OWCP prepared a statement of accepted facts describing appellant's noise exposure at work from March 2002 to the present. It referred him to Dr. Jack W. Aland, a Board-certified otolaryngologist, for a second opinion examination.

In a report dated January 6, 2015, Dr. Aland diagnosed high-frequency neurosensory hearing loss on the left side. He found that appellant's noise exposure was sufficient in duration and intensity to have caused hearing loss. Dr. Aland concluded, however, that the hearing loss was unrelated to noise exposure. He related that appellant "had a high[-]frequency loss on the left before his federal civilian employment. Dr. Aland has not lost any hearing in his right ear over the years." He recommended hearing protection. Dr. Aland provided the results of an audiogram performed that date on his behalf.

By decision dated January 26, 2015, OWCP denied appellant's claim for bilateral hearing loss. It determined that he had established that he experienced noise exposure at work. OWCP found, however, that the second opinion evaluation by Dr. Aland was not sufficiently rationalized to establish that he sustained employment-related hearing loss.

On appeal appellant contends that he submitted everything he needed to support his claim.

LEGAL PRECEDENT

An employee seeking benefits 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[2] including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.[3] In an occupational disease claim, appellant's burden requires submission of the following: (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 medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[5] 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.[6] Neither the fact that appellant's condition became apparent during a period of employment nor, his belief that the condition was caused by his employment is sufficient to establish causal relationship.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.[7] While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.[8] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.[9]

ANALYSIS

Appellant alleged that he sustained hearing loss as a result of noise exposure during the course of his federal employment. OWCP accepted that he was exposed to noise while working

[2] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55 (1968).

[3] *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008).

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

[5] *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

[6] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[7] *See S.S.*, Docket No. 14-272 (issued July 8, 2014); *Vanessa Young*, 55 ECAB 575 (2004).

[8] 20 C.F.R. § 10.121.

[9] *Melvin James*, 55 ECAB 406 (2004).

as a heavy mobile equipment repairer at the employing establishment. It denied appellant's claim, however, after finding that the medical evidence was insufficient to establish that the hearing loss was causally related to noise exposure at work.

OWCP based its denial of appellant's claim on the medical report of Dr. Aland, who provided a second opinion examination. On January 6, 2015 Dr. Aland diagnosed left high-frequency neurosensory hearing loss. He found that the hearing loss was not related to noise exposure as appellant had left-sided hearing loss prior to his federal employment. Dr. Aland, however, did not provide a fully-rationalized medical opinion as to whether the left-sided hearing loss had increased. However, if medical evidence reveals that a work factor contributed in any way to a claimant's condition, such condition is employment related.[10] Audiograms from the employing establishment's hearing conservation program in 2007 reflect a decrease in hearing since the time of his baseline audiogram obtained when he began employment in 2002. Dr. Aland did not explain whether any loss could be contributed to his employment noise exposure. Accordingly, the Board finds that Dr. Aland's opinion is not sufficiently rationalized to provide a sufficient basis for denying appellant's claim.[11]

Additionally, OWCP determined that Dr. Aland's report was insufficiently rationalized to show causal relationship and denied the claim after finding that appellant had not met his burden of proof. Dr. Aland, however, was an OWCP referral physician. It is well established that proceedings under FECA are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[12] Once OWCP undertook development of the evidence by referring appellant to a second opinion examination, it had the duty to secure an appropriate report sufficient to resolve the relevant issues in the case.[13] As Dr. Aland failed to provide a rationalized medical opinion as to whether appellant's noise exposure contributed to his hearing loss, the case will be remanded to OWCP for further development of the medical evidence.

On remand, OWCP should obtain a rationalized opinion regarding whether appellant's hearing loss was causally related to factors of his employment, including an opinion of whether his exposure to noise contributed in any way to his hearing loss. After such further development as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

[10] *See R.L.*, Docket No. 11-115 (issued June 14, 2011).

[11] *T.T.*, Docket No. 14-1616 (issued November 20, 2014).

[12] *See S.T.*, Docket No. 12-1099 (issued April 1, 2013).

[13] *See Donald R. Gervasi*, 57 ECAB 281 (2005); *Mae Z. Hackett*, 34 ECAB 1421 (1983).

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: June 25, 2015
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board