



result of his federal employment. He stated that he first became aware of his condition on July 7, 2004 and that his loss of hearing occurred over time.<sup>2</sup>

OWCP received audiograms dated September 11, 1992, September 1, 1994, April 24, 1995, October 7, 1997, June 25, 1998, August 14, 2001, August 4, 2008, July 20, 2009, July 19, and August 2, 2010, May 23, 2011, July 16, 2012, and July 12, 2013 along with several audiogram history/reports which indicated that appellant was exposed to machines and heavy equipment noise intermittently four, six, or eight hours per day.

In an August 2, 2010 report, Dr. James C. Walker, a Board-certified otolaryngologist, noted that appellant worked as a mine inspector and presented with complaints of unspecified hearing loss which had been a problem for the past two years. An audiogram was administered and an assessment of sensorineural hearing loss was provided.

In a February 22, 2013 audiologist review report, Sarah E. Ervin reviewed appellant's audiograms from September 11, 1992 through July 16, 2012 and opined that he had bilateral low frequency hearing loss. In the right ear, an age-corrected standard threshold shift occurred when compared to the baseline.

In a June 19, 2014 statement, the employing establishment advised that since 1992 appellant had worked as an underground and surface mine inspector. As a mine inspector, appellant had been subjected to a variety of differing noise levels and sources to include mobile equipment, drills, channel burners, excavators, milling and rock crushing facilities, as well as a variety of conveyances. The employing establishment stated that mine inspection work rarely exposed the inspector to high noise levels for any length of time, noting that 20 percent of time for inspection was for travel, 20 percent was for report writing, and the remaining 60 percent was for time spent on a mining site. The average is no more than 6 hours per day, 5 days a week at a mine site. During site inspections, the inspectors are not exposed to noise levels higher than 90 decibels for any length of time, especially if the inspector acted with prudence and wore hearing protection. The employing establishment noted that hearing protection was provided and encouraged.

In a hearing loss checklist, appellant related his employment history. He indicated that he had audiograms when he first began working for the employing establishment in 1992 and his last audiogram was July 12, 2013. In 2004 appellant was told that there was a shift in his hearing and he noticed that his hearing had worsened. On July 12, 2013 he was told that he has a serious hearing problem and that comment was made while his supervisor (Joseph Olivier) was present.

On July 9, 2014 OWCP informed appellant of the evidence needed to support his claim and requested that additional factual and medical information be provided within 30 days. It also requested that the employing establishment provide any treatment notes it may have for appellant regarding his noise exposure.

In a July 14, 2014 statement, appellant responded to OWCP's questionnaire.

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<sup>2</sup> On July 17, 2014 OWCP accepted the conditions of derangement right lateral meniscus, left medial meniscus tear, and permanent aggravation of degenerative joint disease, right for appellant's claim of January 8, 2013.

OWCP prepared a statement of accepted facts and referred appellant, along with the medical record, to Dr. Robert G. Brousse, a Board-certified otolaryngologist, for a second opinion to assess if he had sustained noise-induced hearing loss caused by his exposure to hazardous noise during his federal employment. In an October 16, 2014 report, Dr. Brousse reviewed the statement of accepted facts, appellant's medical records including all audiometric data, examined appellant, and conducted an audiological evaluation. He opined that appellant's mild-to-moderate sensorineural hearing loss was not due to noise exposure encountered in federal employment. Dr. Brousse explained that appellant had high-frequency hearing loss prior to his federal employment and that this hearing loss gradually worsened over 20 years. He also explained that the workplace exposure was not sufficient as to intensity and duration to have caused the hearing loss and noted that at the beginning of appellant's exposure to noise in federal employment, the audiometric data showed moderate noise dip at high frequency. Dr. Brousse also noted that appellant has diabetes and hypertension by history.

By decision dated November 17, 2014, OWCP denied appellant's hearing loss claim as the medical evidence did not support that his hearing loss was causally related to workplace noise exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation was claimed was causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim was predicated on a traumatic injury or an occupational disease.<sup>4</sup>

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.<sup>5</sup> Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;<sup>7</sup> (2) a factual statement identifying employment factors alleged to have caused or contributed to the

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

<sup>6</sup> *See John W. Butler*, 39 ECAB 852, 858 (1988).

<sup>7</sup> *Michael R. Shaffer*, 55 ECAB 386 (2004).

presence or occurrence of the disease or condition;<sup>8</sup> and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>9</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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>10</sup>

### ANALYSIS

It is not disputed that appellant was exposed to work-related noise while employed as a mine safety and health inspector at the employing establishment. In its November 17, 2014 decision, OWCP denied his occupational disease claim and found that the medical evidence did not establish a causal connection between his hearing loss and workplace noise exposure.

To further develop the claim, OWCP referred appellant to Dr. Brousse for a second opinion evaluation. In his October 16, 2014 report, Dr. Brousse found that appellant had high-frequency hearing loss prior to his federal employment. The audiometric data showed moderate noise dip at high frequency, and that this hearing loss gradually worsened over 20 years. Dr. Brousse also explained that the workplace exposure was not intense enough or long enough to have caused the hearing loss. 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. An August 2, 2010 audiogram conducted for Dr. Walker provided an assessment of sensorineural hearing loss. However, Dr. Walker did not provide an opinion on causation. It is noted that the other audiograms of record contained no identification or certification of the examiner. Audiologists are not considered physicians under FECA.<sup>11</sup> None of the audiograms appellant submitted were accompanied by a physician's report identifying the employment factors believed to have caused or contributed to his hearing loss.

The Board finds that 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.

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<sup>8</sup> *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

<sup>9</sup> *Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup> *Thomas O. Bouis*, 57 ECAB 602 (2006). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2). See *Joshua A. Holmes*, 42 ECAB 231 (1990) (an audiogram prepared by an audiologist must be certified by a physician before it can be used to determine hearing loss).

On appeal, appellant states that it is hard for him to believe his hearing loss is not work related because he was exposed to noise 8 to 12 hours per day, 40 hours per week. He has the burden of establishing by reliable, probative, and substantial evidence that his hearing loss was causally related to noise exposure in his federal employment.<sup>12</sup> Neither the condition becoming apparent during a period of employment, nor the belief of the employee, is sufficient to establish causal relationship.<sup>13</sup> In this case, appellant has not submitted sufficient medical opinion evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure.

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.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained hearing loss in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2015  
Washington, DC

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

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

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

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<sup>12</sup> See *supra* note 5.

<sup>13</sup> See *supra* note 6.