

he retired. Appellant was exposed to noise during this period from diesel engines, boilers, pumps, blowers, chipping guns, grinders, needle guns, drills, deck crawlers, diesel engines, pumps, boilers, and ventilation fans. He was provided with hearing protection.

On April 17, 2015 OWCP advised appellant that the evidence was insufficient to support his claim and requested additional evidence. It also requested additional evidence from the employing establishment.

Appellant submitted annual hearing examinations and audiogram results from 1977 to 2004, in addition to an audiogram dated February 2, 2015. The examinations and audiogram testing reports establish that during his tenure of employment, appellant developed a documented mild high frequency sensorineural hearing loss bilaterally. In a consultation sheet included with his annual hearing examinations conducted for the employing establishment, the medical record documents hearing loss on the hearing conservation audiograms. The February 2, 2015 audiogram, however, was unsigned and offered no opinion as to whether appellant sustained employment-related hearing loss.

On April 29, 2015 appellant was referred to an otolaryngologist, along with a statement of accepted facts, for a second opinion examination to determine whether he sustained hearing loss related to noise exposure at work.

In a May 12, 2015 second opinion report, Dr. Julie A. Gustafson, a Board-certified otolaryngologist, reviewed appellant's medical history and noted that an audiogram taken that day showed hearing thresholds at 500, 1,000, 2,000, and 3,000 hertz (Hz) were 35, 30, 30, and 30 decibels for the right ear and 30, 35, 45, and 25 decibels for the left ear. The results of this audiogram showed 3.75 percent monaural loss in the left ear is appreciated and 0 percent monaural loss in the right ear.

Dr. Gustafson opined that this hearing loss was not causally related to workplace noise exposure. She compared the baseline audiogram taken on October 9, 1981 with an audiogram taken just before appellant's retirement on November 2, 2004, which showed decreased hearing throughout all frequencies at a mild-to-moderate level. Dr. Gustafson noted no significant threshold shift when compared to the audiometric reference of August 24, 1999. She noted that when appellant left federal employment he was almost 60 years of age, and advised that audiometric testing performed in 2015, almost 10 years later, showed a continued decrease in hearing at around the same rate as seen in early audiometric evaluations, with some acceleration of loss in the highest frequencies in a pattern consistent with presbycusis. Dr. Gustafson noted a possible genetic predisposition toward hearing loss. She also diagnosed tinnitus.

Dr. Gustafson opined that appellant did not have a consistent pattern of hearing loss that would be associated with employment-related noise exposure. She noted that the testing patterns showed much more involvement of the low-to-mid frequencies and a more flat loss than would normally be seen due to injurious noise exposure and she also noted that the level of noise contribution from workplace noise was not substantial. Dr. Gustafson found that the gentle, sloping high frequency loss seen in the most recent audiograms was most consistent with the changes normally associated with presbycusis and that the mid-to-low frequency loss was most consistent with a genetic predisposition for a loss of hearing in all frequencies. She determined

that there was no audiometric evidence of a noise-induced hearing loss on any recent audiograms. Dr. Gustafson further found that appellant's tinnitus did not interfere with any activities of daily living.

Dr. Gustafson concluded that appellant had a sensorineural hearing loss which was not due to his federal employment and occupational noise exposure. She asserted that the rate of loss and frequencies affected as seen on the occupational hearing testing were not consistent with noise-induced hearing loss. Dr. Gustafson recommended hearing aids, but indicated that this was not due to occupational noise exposure.

In a decision dated June 5, 2015, OWCP denied appellant's claim, finding that the medical evidence failed to establish that his hearing loss resulted from his federal employment.

LEGAL PRECEDENT

An employee seeking compensation under FECA² has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,³ 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.⁴ 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.⁵

The Board has held that a program of annual audiometric examinations conducted by an employing establishment in conjunction with an employee testing program for hazardous noise exposure is sufficient to constructively establish actual knowledge of a hearing loss, such as to put the immediate supervisor on notice of an on-the-job injury.⁶

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.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical

² 5 U.S.C. §§ 8101-8193.

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

⁴ *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).

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

⁶ *G.C.*, Docket No. 12-1783 (issued January 29, 2013).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. 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.⁸

OWCP procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic 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; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; 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: 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.⁹

ANALYSIS

The record establishes that appellant had a slight ratable hearing loss in the left ear and that he was exposed to loud noise in his federal workplace. The issue, therefore, is whether this workplace exposure caused or aggravated his hearing loss.¹⁰

OWCP referred appellant to Dr. Gustafson, a Board-certified otolaryngologist, for a second opinion examination. Dr. Gustafson reviewed appellant's medical history and conducted a physical examination. She concluded that appellant had a slight sensorineural hearing loss

⁸ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ The Board finds there is probative evidence that appellant's claim for compensation was timely filed. Appellant retired from the employing establishment in 2005. Since he did not file a claim by February 2, 2015 his claim was filed outside the three-year time limitation period. Appellant's claim would still be regarded as timely under section 8122(a)(1) of FECA if his immediate supervisor or agency physician or dispensary had actual knowledge of the injury within 30 days of his last exposure to noise in 2005. The Board has held that a program of annual audiometric examinations conducted by an employing establishment in conjunction with an employee testing program is sufficient to constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury. See *James A. Sheppard*, 55 ECAB 515 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.3(a)(3)(c) (March 1993). The employing establishment provided hearing conservation data from 1977 to 2005. The record does not indicate that OWCP considered whether this evidence shows actual knowledge under section 8122(a)(1). The Board finds that this program was sufficient in this case to constructively establish actual knowledge of a hearing loss and place the employing establishment and his immediate supervisor on notice of an on-the-job injury as the hearing test results documented hearing loss on audiograms during his period of employment.

which was not due to his federal employment and occupational noise exposure. Dr. Gustafson compared audiograms from the beginning of appellant's employment, at the time of his retirement, and his current evaluation. She noted that appellant's current audiogram showed decrease in hearing at about the same rate as the audiograms performed over 10 years ago, with some acceleration of loss in the higher frequencies, which she related was a pattern consistent with presbycusis. Dr. Gustafson further explained that the testing patterns over the years showed much more involvement of the low-to-mid frequencies and a more flat loss than would normally be seen due to injurious noise exposure; she opined that the level of noise contribution from workplace noise was not substantial. She found that the gentle, sloping high frequency loss seen in the most recent audiograms was most consistent with the changes normally associated with presbycusis and that the mid-to-low frequency loss was most consistent with a genetic predisposition for a loss of hearing in all frequencies. Dr. Gustafson determined that there was no audiometric evidence of a noise-induced hearing loss on any recent audiograms. She provided rationale in support of her opinion that appellant's bilateral hearing loss was not causally related to his federal employment.

Thus, appellant did not establish that his exposure to noise in the workplace caused or aggravated his hearing loss.¹¹

The additional medical evidence of record is also insufficient to establish appellant's claim. Appellant submitted annual hearing examinations and audiogram results from 1977 to 2004 and February 2, 2015. These reports, however, do not contain any medical opinion explaining how noise exposure at appellant's workplace may have aggravated his hearing loss. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

Dr. Gustafson provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. As there was no other medical evidence showing that appellant had a bilateral hearing loss causally related to employment factors, the Board affirms OWCP's June 5, 2015 decision.

Appellant may submit new evidence or argument with a 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 bilateral hearing loss causally related to his federal employment.

¹¹ See *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹² *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 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