

FACTUAL HISTORY

On June 5, 1994 appellant then a 44-year-old crane operator supervisor, filed an occupational disease claim, alleging that his hearing loss was caused by his over 20 years of work with the employing establishment.

OWCP referred appellant to Dr. Preston Rice, a Board-certified otolaryngologist. In a September 28, 1994 report, Dr. Rice noted that appellant had worked for the employing establishment since 1973, but that he only had audiograms from 1984 to 1994 for review. He noted that appellant related a significant change in his left ear since he began work with the employing establishment. Dr. Rice stated that audiograms from 1984 to 1994 did not show any significant change beyond what would be expected from presbycusis. He opined that there was nothing in appellant's work history to explain an increase in hearing loss in only one ear. Dr. Rice concluded that there was no significant aggravation of appellant's hearing loss due to workplace noise exposure.

In a December 9, 1994 decision, OWCP denied appellant's claim, finding that his hearing loss was due to a preexisting condition.

On January 7, 2015 appellant filed a claim, alleging that his bilateral hearing loss and tinnitus had been caused by factors of his federal employment.³ He opined that appellant had hearing loss from noise exposure as a ship's carpenter and a crane operator. Appellant stated that his condition was caused or aggravated by his employment on September 1, 1997. The employing establishment controverted the claim and noted that he had retired on September 1, 1997.

By letters dated February 3, 2015, OWCP informed appellant and the employing establishment of the type of evidence needed to develop his claim and requested that they submit such evidence within 30 days. It asked appellant to indicate why he did not file his claim earlier. OWCP also asked him to state whether he had previously filed a claim for hearing loss and, if so, to provide information about that claim. It further asked appellant to describe all previous ear or hearing problems.

OWCP received personnel records from the employing establishment, including appellant's employment history, position descriptions, and notices of personnel action. A January 7, 2015 report from an audiologist was also submitted.

By decision dated April 16, 2015, OWCP denied appellant's claim for hearing loss as the evidence was insufficient to establish that the workplace exposure occurred as described. It noted that the claim form indicated that appellant was not aware that he could file a claim. OWCP noted that appellant did not respond to its questions in its February 3, 2015 letter. It also noted that appellant had a previous June 5, 1994 claim for hearing loss that had been denied on December 9, 1994. OWCP found that appellant did not respond to any of the questions and he failed to identify the source of the hazardous noise exposure. It also explained that the medical

³ OWCP combined the files for the 1994 claim and the 2015 claim.

evidence had not established a diagnosed medical condition causally related to the work injury or event.

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 timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ 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.⁵

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; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that 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.

ANALYSIS

In this case, OWCP denied appellant’s claim because it determined that the workplace exposure had not occurred as described. By letter dated February 3, 2015, it informed him of the evidence needed to support his claim. OWCP also asked appellant to address whether he had previously filed a similar claim. Finally, it asked appellant to describe all previous ear or hearing problems.

OWCP received appellant’s personnel records and a report from a January 7, 2015 audiology examination. However, appellant did not submit a factual statement responding to the February 3, 2015 requests for information. He did not identify the source of his hazardous noise exposure. This is especially important because appellant had filed a claim for hearing loss on June 5, 1994. The claim was denied on December 9, 1994. Appellant did not explain whether he had a subsequent noise exposure, which he claimed caused his alleged hearing loss. Without the requested factual information, he has not provided sufficient documentation to support his claim. The Board finds that the evidence does not establish hearing loss.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish bilateral hearing loss and tinnitus causally related to his federal employment.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 5, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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