United States Department of Labor
Employees' Compensation Appeals Board

R.T., Appellant	)	
and	)	**Docket No. 15-1447**
	)	**Issued: October 15, 2015**
DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bangor, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 24, 2015 appellant filed a timely appeal of a June 5, 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 to consider the merits of this case.

ISSUE

The issue is whether appellant established bilateral hearing loss causally related to his federal employment.

FACTUAL HISTORY

Appellant, a 73-year-old planner man, filed an occupational disease claim (Form CA-2) on November 5, 2014, alleging that he sustained a bilateral hearing loss caused by factors of his

[1] 5 U.S.C. § 8101 *et seq.*

federal employment. He worked at the employing establishment from 1967 to 1968 as a ship fitter, from 1972 to 1989 as an outside mechanist, and at a desk job as a planner man from 1989 until 2010 when he retired. OWCP accepted that appellant was exposed to noise during this period from shipboard operating machinery and equipment, industrial shop machines, equipment or tools, including chipping guns, grinders, drills, needle guns, carbon arc, motors, pumps, and cranes. Appellant was provided with hearing protection.

On December 18, 2014 OWCP advised appellant that the evidence was insufficient to support his claim and requested evidence, including medical evidence establishing causal relationship between a diagnosed condition and factors of his employment. It also requested additional evidence from the employing establishment.

Appellant submitted annual hearing examinations and audiogram results from 1972 to 1990, in addition to an audiogram dated July 11, 2001. These audiograms provided no medical opinion regarding causal relationship.[2]

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 27, 2015 second opinion report, Dr. Thomas J. Mueller, a Board-certified otolaryngologist, reviewed appellant's medical history and stated that an audiogram taken that day showed a slightly down sloping hearing loss beginning at 250 hertz.[3] He asserted that the hearing loss at the end of significant noise exposure in 1986 was within normal limits and in fact had since decreased significantly in all frequencies. Dr. Mueller opined that this did not necessarily show a sensorineural loss in excess of what would be normally predicated on the basis of presbycusis.

Dr. Mueller concluded that the workplace exposure as described by appellant was not of sufficient intensity and duration to have caused or contributed to the hearing loss in question, as confirmed by 20 years of alleged noise exposure without any evidence of hearing loss. He concluded that appellant had a sensorineural hearing loss which was not due to his federal employment and occupational noise exposure. Dr. Mueller reiterated that the 1988 audiogram showed completely normal hearing and the current 2015 audiogram was inconsistent with an occupational noise-induced pattern as well. He 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.

[2] OWCP determined that appellant's claim was timely filed. Appellant retired from the employing establishment on June 3, 2010 and filed this claim on November 5, 2014. However, the program of annual audiometric examinations conducted by the employing establishment constructively established 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).

[3] The 2015 audiogram revealed hearing thresholds at 500, 1,000, 2,000, and 3,000 hertz (Hz) were 30, 30, 40, and 50 decibels for the right ear and 40, 40, 35, and 50 decibels for the left ear.

LEGAL PRECEDENT

An employee seeking compensation under FECA[4] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,[5] 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.[6] 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.[7]

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.[8]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical 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.[9]

ANALYSIS

The record establishes that appellant currently has bilateral hearing loss and that he was exposed to loud noise in his federal workplace. The issue, therefore, is whether this exposure caused his hearing loss. In order to establish causal relationship, appellant must submit medical opinion evidence, supported by medical rationale, explaining that hearing loss resulted from his federal employment.

As the employing establishment audiograms appellant submitted to the record did not provide an opinion regarding causal relationship, OWCP referred appellant to Dr. Mueller, a Board-certified otolaryngologist, for a second opinion examination. Dr. Mueller reviewed

[4] 5 U.S.C. §§ 8101-8193.

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

[6] *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).

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

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

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

appellant's medical history and conducted a physical examination. He concluded that appellant had sensorineural hearing loss which was not due to his federal employment and occupational noise exposure. Dr. Mueller compared appellant's 1988 audiogram (at the end of appellant's exposure to noise) with his baseline audiogram in 1972 and opined that both of these audiograms indicated that appellant's hearing was within normal limits. He noted that appellant's hearing loss at the end of any significant noise exposure was within normal limits, but that his hearing loss had decreased significantly since 1988 in all frequencies. Dr. Mueller opined that this did not show sensorineural loss in excess of what would be normally predicated on the basis of presbycusis. He concluded that the workplace exposure as described by appellant was not of sufficient intensity and duration to have caused or contributed to the hearing loss in question, as confirmed by 20 years of alleged noise exposure without any evidence of hearing loss. Dr. Mueller concluded that appellant had a sensorineural hearing loss which was not due to his federal employment and occupational noise exposure. Thus, his report did not establish that exposure to noise in the workplace caused or aggravated his hearing loss.[10]

The additional medical evidence of record is also insufficient to establish appellant's claim. Appellant submitted annual hearing examinations and audiogram results from 1964 to 1990 and July 11, 2001. 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.[11] These audiograms are insufficient to satisfy appellant's burden of proof as they do not comply with the requirements set forth by OWCP.

The Board has recognized that a claimant may be entitled to a schedule award for hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.[12] There was no medical evidence before OWCP at the time of its June 5, 2015 decision providing an opinion that appellant's hearing loss was work related.

Dr. Mueller provided a thorough examination and a reasoned opinion explaining how the findings of his hearing loss on examination and testing were not due to the noise in appellant's employment. As there was no other medical evidence establishing 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.

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

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

[12] *See D.G.*, Docket No. 15-0702 (issued August 27, 2015).

CONCLUSION

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

ORDER

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

Issued: October 15, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board