

**United States Department of Labor
Employees' Compensation Appeals Board**

J.S., Appellant

and

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Bremerton, WA,
Employer**

**Docket No. 15-1279
Issued: September 1, 2015**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 18, 2015 appellant filed a timely appeal from an April 20, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 met his burden of proof to establish hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On October 15, 2014 appellant, then a 67-year-old retired marine machinery mechanic, filed an occupational disease claim (Form CA-2) alleging hearing loss as a result of exposure to

¹ 5 U.S.C. § 8101 *et seq.*

loud noise. He became aware of his condition and of its relationship to his federal employment on October 1, 1998. A supervisor noted that appellant had retired on March 16, 2000.

Appellant submitted an employment history dated August 26, 2014. He noted that from 1966 through 1972, he was employed by the U.S. Army as a helicopter mechanic, and was exposed to noise in this position for eight hours per day without hearing protection. From 1973 through 1974, appellant worked at a sugar plant as an oiler, and was exposed to noise for eight hours per day without hearing protection. From 1974 through 1975, he was employed by I.W. Johnson, where he machined parts and repaired equipment, and was exposed to noise for eight hours per day without hearing protection. From 1975 through 1980, appellant was employed as a janitor for Pierce County, where he was not exposed to significant noise. From 1980 through 1984, he was employed by Tacoma Boat as an outside machinist, and was exposed to noise for eight hours per day without hearing protection. From 1984 through 1985, appellant was employed by Lockport Marine as an outside machinist, and was exposed to noise for eight hours per day without hearing protection. From 1987 through 1999, he was employed by Puget Sound Naval Shipyard as a marine machinery mechanic, where he was exposed to noise from chipping guns, grinders, drills, diesel motors, ventilation fans, cranes, and forklifts for eight hours per day with hearing protection provided. Appellant noted that he had once had a ruptured eardrum, and was last exposed to hazardous noise in October 1999.

By letter dated October 22, 2014, OWCP advised appellant of the evidence needed to establish his claim. It afforded him 30 days to submit additional evidence. OWCP also requested information regarding appellant's exposure to hazardous noise from the employing establishment.

Appellant responded to OWCP by letter dated October 27, 2014, enclosing his employment history. He noted that he had retired in October 1999 and that he had first noticed his hearing loss on October 1, 1998.

By letter dated November 3, 2014, the employing establishment responded to OWCP's development letter and stated that it challenged the claim as being filed beyond three years. It noted that the positions appellant held at the employing establishment required annual monitoring under a hearing conservation program. Along with this letter, the employing establishment submitted audiograms that were gathered under this hearing conservation program.

On November 7, 2014 the employing establishment submitted the results of an investigation into appellant's exposure to hazardous noise. It noted that, from March 17, 1987 through March 16, 2000, appellant was exposed to background noise from a ship that varied between 79 and 89 decibels continuously. Appellant was also exposed to background noise from a shop of below 80 decibels continuously, and exposed to noise from tool use ranging between 100 and 110 decibels intermittently.

On March 19, 2015 OWCP referred appellant to an otolaryngologist to obtain a second opinion evaluation of the cause and nature of appellant's hearing loss.

In a report dated April 8, 2015, Dr. Julie A. Gustafson, a Board-certified otolaryngologist, examined appellant, reviewed his medical records, and analyzed the results of

an audiogram performed on that date. She reviewed audiograms from June and July 1987 at the time appellant began work at the Puget Sound Shipyard. Dr. Gustafson diagnosed appellant with hearing loss and tinnitus, noting that the audiometric findings, when compared to those at the beginning of exposure, did not show a sensorineural loss in the right ear that would be in excess of what would be normally predicted on the basis of presbycusis. She found decreased hearing in the left ear, in excess of what normally would be predicted on the basis of presbycusis, and found it to be related to prior barotrauma. Dr. Gustafson stated that appellant's hearing loss was unrelated to noise exposure in his federal employment.

By decision dated April 20, 2015, OWCP denied appellant's claim for compensation. It found that the medical evidence failed to establish a work-related injury. OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the employment factors occurred; that a medical condition had been diagnosed; and that he was within the performance of duty.

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 is claimed is causally related to the employment injury.² These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.³

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.

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁴ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that

² *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Michael E. Smith*, 50 ECAB 313, 315 (1999).

⁴ *Roma A. Mortenson-Kindschi*, 57 ECAB 418, 428 n.37 (2006); *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.⁶ Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant'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 claimant, 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 claimant.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

OWCP accepted that appellant was a federal civilian employee who filed a timely claim; that the employment factors occurred; that a medical condition had been diagnosed; and that he was within the performance of duty.⁹ It denied his claim as the medical evidence did not establish a causal relationship between factors of his federal employment and his hearing loss. The Board finds that appellant has not met his burden of proof to establish that his condition was causally related to duties of his federal employment.

In a report dated April 8, 2015, Dr. Gustafson examined appellant, reviewed his medical records including audiograms of 1987 when appellant began his federal employment at the Puget Sound Shipyard, and analyzed the results of an audiogram performed on that date. She diagnosed appellant with hearing loss and tinnitus, but found that appellant's hearing loss was unrelated to noise exposure in his federal employment.

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.¹⁰ There is no medical evidence in the record before OWCP at the

⁵ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

⁶ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

⁷ *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

⁸ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁹ The Board notes that OWCP correctly determined that appellant's claim was timely filed, as he was enrolled in a hearing conservation program. 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. *See G.C.*, Docket No. 12-1783 (issued January 29, 2013).

¹⁰ *See J.R.*, 59 ECAB 710, 713 (2008).

time of its April 20, 2015 decision containing an opinion that appellant's hearing loss was work related. The only medical evidence containing a definitive opinion as to the relation of his hearing loss and factors of his federal employment, that of the April 8, 2015 report of Dr. Gustafson, stated that his hearing loss was not work related. Appellant has not submitted any medical evidence supportive of a causal relationship between his federal employment and his hearing loss, and thus has not met his burden to establish such a causal relationship.¹¹

As such, the Board finds that the medical evidence does not establish that appellant sustained hearing loss causally related to his employment. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment, is sufficient to establish causal relationship.¹² Causal relationships must be established by rationalized medical opinion evidence. As noted, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that he did not meet his burden of proof in establishing his claim.

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 hearing loss causally related to his federal employment.

¹¹ See *R.S.*, Docket No. 14-1995 (issued February 25, 2015).

¹² See *Dennis M. Mascarenas*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2015
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board