



## **FACTUAL HISTORY**

On August 18, 2013 appellant, a 66-year-old explosives worker, filed an occupational disease claim (Form CA-2) alleging that he sustained additional hearing loss due to noise exposure in the course of his federal employment. On the claim form, the employing establishment indicated that he was reassigned to a light-duty position in storage on January 11, 2011. A statement of accepted facts confirmed that appellant was employed as an explosives worker from 2003 to 2011, that he was a participant in the hearing conservation program, and had a previously accepted claim for binaural hearing loss under OWCP File No. xxxxxx108.

In a September 3, 2013 letter, OWCP notified appellant of the deficiencies of his claim and afforded him 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated November 26, 2013, OWCP denied appellant's claim as the evidence was insufficient to establish that the claimed work events occurred as alleged.

On January 14, 2014 appellant requested reconsideration and submitted audiograms dated January 15, 2004 through February 13, 2013 from the employing establishment's hearing conservation program.

By decision dated February 25, 2014, OWCP denied modification of its prior decision.

On August 25, 2014 appellant again requested reconsideration and submitted an August 15, 2014 narrative statement and memoranda from the employing establishment dated October 20, 2010, September 8, 2011, and May 2, 2012 regarding noise exposure in the workplace and the availability of hearing protection. He also resubmitted audiograms dated January 15, 2004 through December 4, 2013 from the employing establishment's hearing conservation program.

OWCP referred appellant to The Scholl Center for diagnostic testing to evaluate his hearing. An audiological evaluation dated July 6, 2015 demonstrated mild-to-moderate-severe sensorineural hearing loss in the right ear and mild-to-severe sensorineural hearing loss in the left ear. The July 6, 2015 audiogram exhibited the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 35, 35, 35, and 45 for the right ear and 30, 30, 35, and 45 for the left ear.

OWCP referred appellant to Dr. Charles Heinberg, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of appellant's employment-related hearing loss. In his July 6, 2015 report, Dr. Heinberg reviewed a statement of accepted facts, appellant's medical records and history, and conducted a physical examination. He diagnosed bilateral sensorineural hearing loss based on the July 6, 2015 audiogram performed on his behalf. Dr. Heinberg reported appellant's percent of hearing loss according to the formula derived by the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> as 19 percent monaural hearing loss in the right ear,

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

15 percent monaural hearing loss in the left ear, and 16 percent hearing loss binaurally. He noted that appellant had a long history of hearing loss since 2004. Dr. Heinberg concluded, however, that appellant's pattern of hearing loss was "more consistent with presbycusis than noise trauma" and opined that it was not due to noise exposure encountered during the course of his federal employment. In response to OWCP's question, "Was the workplace exposure, as described in the material provided, sufficient as to intensity and duration to have caused the loss in question?," Dr. Heinberg replied "Yes." However, he also opined that, "The sensorineural hearing loss seen is, in part or all, in my opinion NOT DUE to noise exposure encountered in this claimant's [f]ederal civilian employment." (Emphasis in the original.) Dr. Heinberg determined that the date of maximum medical improvement was July 6, 2015 and recommended hearing aids.

On July 28 2015 Dr. H. Mobley, an OWCP medical adviser, reviewed Dr. Heinberg's report and audiometric test of July 6, 2015. He concurred with Dr. Heinberg's findings and calculations under the sixth edition of the A.M.A., *Guides* and concluded that appellant had 16 percent binaural hearing loss. Dr. Mobley concurred with Dr. Heinberg that appellant's hearing loss was compatible with presbycusis and, therefore, it was not causally related to his federal employment. He further opined that hearing aids should not be authorized as appellant's hearing loss was not employment related. Dr. Mobley determined that the date of maximum medical improvement was July 6, 2015.

By decision dated July 31, 2015, OWCP denied appellant's claim as the medical evidence of record failed to establish a causal relationship between his hearing loss and factors of his federal employment.

### **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, and that an injury<sup>3</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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

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<sup>3</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>4</sup> See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. 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.<sup>6</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision due to inconsistencies in Dr. Heinberg's second opinion report.

OWCP referred appellant to Dr. Heinberg for a second opinion evaluation to determine the nature and extent of appellant's employment-related hearing loss. In his July 6, 2015 report, Dr. Heinberg diagnosed bilateral sensorineural hearing loss and noted that appellant had a long history of hearing loss since 2004. In response to OWCP's question, "Was the workplace exposure, as described in the material provided, sufficient as to intensity and duration to have caused the loss in question?," Dr. Heinberg replied "Yes." However, he also opined that, "The sensorineural hearing loss seen is, in part or all, in my opinion NOT DUE to noise exposure encountered in this claimant's [f]ederal civilian employment." (Emphasis in the original.) Dr. Heinberg indicated that appellant's pattern of hearing loss was "more consistent with presbycusis than noise trauma" and opined that it was not due to noise exposure encountered during the course of his federal employment.

The Board finds that OWCP's referral physician, Dr. Heinberg, provided contradictory findings regarding the cause of appellant's hearing loss by opining that appellant's hearing loss was not work related yet also opining that workplace noise exposure was sufficient to have caused appellant's hearing loss. The Board has held that once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>7</sup> Accordingly, the Board will set aside OWCP's July 31, 2015 decision and remand the case to OWCP to resolve the issue.

The Board further finds that OWCP previously accepted appellant's claim for binaural hearing loss as an explosives worker from 2003 to 2011 under OWCP File No. xxxxxx108. Upon return of the case, OWCP should combine the current case record with File No.

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<sup>5</sup> *Id.* See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

<sup>6</sup> See *I.J.*, 59 ECAB 408 (2008). See also *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> See *Richard F. Williams*, 55 ECAB 343, 346 (2004).

xxxxxx544.<sup>8</sup> Following any necessary further development, OWCP should issue a *de novo* decision.

**CONCLUSION**

The Board finds that this case is not in posture for decision. Further development of the evidence is warranted.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 31, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this decision of the Board.

Issued: April 12, 2016  
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

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<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000) (cases should be doubled when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body).