United States Department of Labor
Employees' Compensation Appeals Board

W.P., Appellant	)	
and	)	**Docket No. 15-0597**
	)	**Issued: January 27, 2016**
DEPARTMENT OF THE NAVY, COMMANDER U.S. PACIFIC FLEET, Bremerton, WA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 23, 2015 appellant filed a timely appeal from a January 2, 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 over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish hearing loss in the performance of duty.

FACTUAL HISTORY

On September 25, 2014 appellant, then a 69-year-old retired sheet metal mechanic, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss as a result of noise exposure from his federal employment. He reported that his hearing loss became progressively worse over the years. As a sheet metal mechanic at the Puget Sound Naval

[1] 5 U.S.C. § 8101 *et seq.*

Shipyard, appellant claimed he was exposed to loud prolonged noise from various manual, electric, pneumatic, and chipping hammers, brakes, pop riveters, drills, saws, gas and air cutters from welders, rolls, punches, and other sheet metal machinery. He first became aware of his condition and of its relationship to his employment on January 1, 2004. Appellant retired on September 1, 2006 and first received medical care for his hearing loss on September 25, 2014.

By letter dated November 19, 2014, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment, and all nonoccupational exposure to noise. OWCP also requested that appellant provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where appellant worked, the sources and period of noise exposure for each location, and copies of all medical examinations pertaining to hearing or ear problems.

Audiograms and hearing conservation data dated September 25, 1984 to August 31, 2006 were submitted.

In a September 24, 2014 Department of Labor and Industries Occupational Hearing Loss Questionnaire, appellant reported that he first noticed his hearing loss approximately 10 years ago which had gradually worsened. He reported difficulty understanding spoken communication and the need to raise the volume on the television. Appellant stated that the employing establishment conducted hearing tests and he had not been examined by any other physician in the past for hearing loss. He noted a medical history of glaucoma in the left eye for which he used eye drops daily. Appellant further stated that he had no prior history of ear or hearing problems. With respect to nonwork noise exposure, he reported that the only noise equipment he operated was a lawn mower once a week for 10 minutes. Appellant was last exposed to hazardous noise from his federal employment on September 1, 2006.

In a September 24, 2014 Department of Labor and Industries Employment History Hearing Loss form, appellant described the types of noise to which he was exposed as a sheet metal mechanic. He stated that he was exposed to this hazardous noise for seven hours per day and was provided ear protection in the form of foam earplugs. The employing establishment's record reflects that appellant worked as a sheet metal apprentice from June 19, 1967 to September 6, 1970 when he was promoted to a sheet metal mechanic. Appellant worked as a sheet metal mechanic from September 6, 1970 until September 1, 2006 when he retired.

In a Department of Labor and Industries Authorization to Release Information Form, appellant authorized Sound ENT Consultants to release any audiograms or medical reports to the employing establishment.

On September 25, 2014 the employing establishment referred appellant to Sound ENT Consultants for a consultation and evaluation of his hearing loss. In a September 25, 2014 consultation report, Dr. Jackson R. Holland, a Board-certified otolaryngologist, reported that appellant had no prior history of ear or hearing problems and noted a medical history of glaucoma of the left eye. He noted that appellant began working at Puget Sound Naval Shipyard in 1975 until he retired in September 2006 where he worked as a sheet metal mechanic and was exposed to noise from drills, air compressors, air arcs, carbon air arcs, hammers, grinders,

chippers, chisels, needle guns, and welders. Sixty percent of appellant's workplace time was spent on shipboard and the other forty percent was spent in the land-based fabrication shop.

Audiometric testing performed that same date revealed the following decibel losses at 500, 1,000, 2,000, and 3,000 hertz (Hz): 15, 25, 10, and 10 for the right ear and 10, 30, 15, and 15 for the left ear. Speech reception thresholds were 15 decibels bilaterally and word reception thresholds were 100 percent bilaterally. Dr. Holland diagnosed presbycusis, stating that appellant had minimal mid frequency hearing loss at 1,000 cycles in the left ear. He opined that this was likely a consequence of age-related circumstance plus known linkage of at least one type of pattern associated with individuals with glaucoma. Dr. Holland noted that high frequencies were missing the normal acoustic notch seen with hazardous noise injury. He noted review of appellant's August 31, 2006 audiogram which showed a single abnormal response in his left ear at 6,000 cycles which provided a hearing level of 30 decibels and the right ear at 6,000 cycles with response of 35 decibels. Dr. Holland estimated that only one or two percent of the high frequency threshold shift documented in 2006 would relate to hazardous levels of workplace noise. He opined that the decline documented since 2006 was wholly and exclusively due to factors of age mixed with a greater proclivity of neurosensory loss in an individual with glaucoma. Dr. Holland did not recommend hearing aids.

By letter dated November 25, 2014, the employing establishment reported that it had submitted appellant's work history and was also providing the best estimate of the degree and frequency of exposure to noise which could have been present in appellant's work environment.

In the employing establishment's Noise Assessment Worksheet, it noted that appellant was exposed to noise from June 19, 1967 to September 1, 2006 working as a sheet metal mechanic. Background ship noise was continuous ranging from 79 to 89 decibels and fell in the lower frequency range. Background shop noise was continuous ranging from 75 to 85 decibels and fell in the lower frequency range. Tool use was intermittent ranging from 90 to 110 decibels and fell in the upper frequency range. An official position description for sheet metal mechanic was also submitted.

By decision dated January 2, 2015, OWCP denied appellant's claim on the grounds that the medical evidence did not support that his hearing loss was causally related to workplace noise exposure. It noted that the report of Dr. Holland associated his hearing loss to presbycusis.

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 an occupational disease.[3]

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

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

In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death. Compensation for disability may not be allowed if a claim is not filed within that time unless: (1) the immediate superior had actual knowledge of the injury or death within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death; or (2) written notice of injury or death as specified in section 8119 was given within 30 days.[4]

Appellant has the burden of establishing by weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.[5] Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.[6]

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;[7] (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;[8] and (3) medical evidence establishing 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.[9]

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medial rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.[10]

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden to establish his or her claim, OWCP also has a responsibility in the development of the evidence.[11]

[4] 5 U.S.C. § 8122(a).

[5] *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

[6] *See John W. Butler*, 39 ECAB 852, 858 (1988).

[7] *Michael R. Shaffer*, 55 ECAB 386 (2004).

[8] *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

[9] *Beverly A. Spencer*, 55 ECAB 501 (2004).

[10] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

[11] *See Claudia A. Dixon*, 47 ECAB 168 (1995).

ANALYSIS

It is not disputed that appellant was exposed to hazardous employment-related noise at the Puget Sound Naval Shipyard. OWCP has also accepted that the claim was timely filed. 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.[12] As appellant was enrolled in a hearing conservation program with the employing establishment, and submitted records of annual audiograms, the employing establishment had actual knowledge of his purported hearing loss.[13]

The issue is whether he established that he sustained employment-related hearing loss due to noise exposure during his federal employment. The Board finds that this case is not in posture for decision.

OWCP procedure manual provides that it is generally accepted that hearing loss may result from prolonged exposure to noise levels above 85 decibels. Acoustic trauma may, however, result from decibel levels below 85 decibels if exposure is sufficiently prolonged. OWCP therefore, does not require that the claimant show exposure to injurious noise in excess of 85 decibels as a condition to approval of the claim.[14]

The record establishes that appellant was exposed to hazardous workplace noise exposure as a sheet metal mechanic from 1967 to 2006. Continuous exposure ranged from 75 to 89 decibels while intermittent high frequency exposure ranged from 90 to 110 decibels. Consequently, regardless of the specific decibel level of exposure, OWCP must consider whether the employment-related noise exposure was sufficiently prolonged to result in acoustic trauma.[15] Such a question is medical in nature and should be resolved by a Board-certified otolaryngologist.

The only medical report of record is Dr. Holland's September 25, 2014 report serving as the employing establishment's physician. Dr. Holland diagnosed presbycusis stating that appellant had minimal mid-frequency hearing loss at 1,000 cycles in the left ear. He opined that this was likely a consequence of age-related circumstance plus known linkage of at least one type of pattern associated with individuals with glaucoma. Dr. Holland reviewed appellant's August 31, 2006 audiogram and estimated that only one or two percent of the high frequency threshold shift documented in 2006 would relate to hazardous levels of workplace noise. He concluded that the decline documented since 2006 was wholly and exclusively due to factors of age mixed with a greater proclivity of neurosensory loss in an individual with glaucoma.

The Board finds that Dr. Holland's report is insufficient on the issue of causal relationship. While Dr. Holland noted the various types of noise appellant was exposed to, there

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

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

[14] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(1) (October 1990).

[15] *Eufrosino T. Torrado*, Docket No. 95-1208 (issued February 14, 1997).

is no indication that he was provided information pertaining to noise dosimetry data as he made no reference to the duration and levels of hazardous noise exposure. This is of particular importance as appellant was exposed to intermittent high frequency noise ranging up to 110 decibels and continuous low frequency noise ranging up to 89 decibels over the course of 37 years. Moreover, Dr. Holland incorrectly stated that appellant worked as a sheet metal mechanic from 1975 to 2006 as the employing establishment reported that his employment spanned from 1969 to 2006. Given that he was not provided pertinent information pertaining to appellant's hazardous noise exposure, his opinion that presbycusis was the cause of his hearing loss is of limited probative value.[16]

The only prior audiogram reviewed was from August 31, 2006. The physician estimated that only one or two percent of the high frequency threshold shift documented in the 2006 audiogram would relate to hazardous levels of workplace noise. The Board notes that there is no requirement that the federal employment be the only cause of appellant's hearing loss. An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, he is entitled to compensation.[17] Moreover, Dr. Holland failed to compare appellant's current audiological findings with those in the beginning of his career as a sheet metal mechanic. The record establishes that appellant was exposed to workplace exposure ranging from 75 to 110 decibels from 1969 to 2006 yet Dr. Holland failed to explain why this hazardous noise exposure did not contribute to appellant's hearing loss.[18] The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.[19] Because Dr. Holland's opinion is equivocal and does not provide a rationalized opinion on the cause of appellant's hearing loss, OWCP should not have relied upon his opinion as a basis for denying appellant's claim for compensation.[20]

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.[21] In hearing loss cases, OWCP should refer the claimant for examination by a qualified specialist if the report submitted by the claimant does not meet all of OWCP's requirements for adjudication.[22] As Dr. Holland's report was not a

[16] Presbycusis is defined as progressive bilaterally symmetrical perceptive hearing loss occurring with advancing age. *See* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, 27th edition (1988).

[17] *See Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

[18] *M.E.*, Docket No. 14-1249 (issued October 22, 2014).

[19] *F.H.*, Docket No. 14-268 (issued July 2, 2014); *A.D.*, 58 ECAB 149 (2006).

[20] *Supra* note 16. *See also W.C.*, Docket No. 14-633 (issued June 19, 2014).

[21] *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

[22] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims, Extended Development*, Chapter 2.800.9(a)(1) (June 2011). Some initial claims require full-scale medical development because the nature of exposure is in question, the diagnosis is not clearly identified, or the relationship of the condition to the exposure is not obvious. *Id.*

reliable report of record, OWCP failed to properly develop the evidence and refer appellant for a medical evaluation in accordance with its procedures.[23]

Thus, the Board finds that this case is not in posture for decision and must be remanded for further development. On remand, OWCP should make findings of fact concerning the noise levels in the employing establishment, the types of noise exposure, the length and period of such exposures, and any other nonoccupational noise exposure. Once it has obtained the pertinent factual evidence, it should prepare a statement of accepted facts and refer appellant for an otological and audiological evaluation regarding whether he sustained hearing loss causally related to the accepted employment exposure.[24] After further development as it deems appropriate, OWCP shall issue an appropriate decision.

CONCLUSION

The Board finds this case is not in posture for a decision.

ORDER

IT IS HEREBY ORDERED THAT the January 2, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this decision.[25]

Issued: January 27, 2016
Washington, DC

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

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

[23] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(b) (January 2013). *See also M.W.*, Docket No. 10-992 (issued December 9, 2010).

[24] *C.S.*, Docket No. 10-2030 (issued June 9, 2011).

[25] James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.