



around loud vehicles, and also used loud tools on a daily basis. Appellant identified June 11, 2015 as the date he first became aware of his hearing loss. It was also the date he first realized his condition was caused or aggravated by his employment. The July 23, 2015 claim form did not indicate a work stoppage. There was no additional factual or medical information submitted with appellant's Form CA-2.

On July 24, 2015 OWCP acknowledged receipt of appellant's hearing loss claim and advised him of the five basic elements for acceptance of a claim under FECA. Additionally, it informed him that the current record did not support that he actually experienced the employment factor(s) alleged to have caused his injury or that he was injured in the performance of duty. OWCP requested specific information regarding appellant's employment history and military service, with corresponding noise exposure, including the type(s) and duration of such exposure. It also inquired whether he utilized any safety devices to protect against noise exposure. Additionally, OWCP asked if appellant was still exposed to hazardous noise at work, and if not, when was his last exposure. It also instructed him to describe any hobbies that involved exposure to loud noise.

The record included an OWCP-generated list of three prior traumatic injury claims appellant filed, two of which involved lumbar and thoracic sprains. The July 24, 2015 development letter inquired whether appellant previously filed any kind of workers' compensation claim for a hearing or ear condition, and what, if any, benefits he received. Lastly, OWCP asked appellant to describe all previous ear or hearing problems, and to provide any related medical evidence. Appellant initially was afforded 30 days to submit the requested information. OWCP requested similar factual information, as well as employee medical records and audiograms from appellant's employing establishment.

On August 5, 2015 OWCP received copies of employer-administered audiograms covering the period June 2003 through June 2015. On March 30 and June 10, 2015 the employing establishment advised appellant of a significant hearing threshold shift exhibited on his recent audiograms. OWCP also received a June 15, 2015 hearing loss questionnaire signed by appellant, and another form entitled *Evidence Required in Support of a Claim for Work-Related Hearing Loss*.<sup>2</sup> This latter form was signed by both appellant and his supervisor. It included much of the same information OWCP requested on July 24, 2015. Additionally, OWCP received a copy of appellant's position description; a job he had been performing since December 2003. The employing establishment provided information regarding appellant's occupational noise exposure from 2003 through 2015, which he described as occurring 9 hours per day, 5 days a week. According to the employing establishment, appellant was exposed to noise from pneumatic tools, grinding, impact tools, and heavy equipment. He also provided information regarding his prior employment and his seven-year military service, including any related noise exposure.

On August 24, 2015 OWCP sent appellant another copy of its July 24, 2015 development letter. The "Second Request" did not acknowledge any of the above-noted evidence received on August 5, 2015.

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<sup>2</sup> The employing establishment provided appellant instructions and a series of worksheets to aid in the filing of his workers' compensation claim.

OWCP subsequently received a September 1, 2015 signed statement of certification from appellant attesting to the accuracy of the information submitted in response to OWCP's July 24, 2015 questionnaire.

By decision dated September 25, 2015, OWCP denied appellant's hearing loss claim because he had not established fact of injury. It indicated that he had not submitted the necessary factual information in response to its July 24 and August 24, 2015 development questionnaire. Consequently, OWCP found that the evidence did not support that the injury and/or event(s) occurred as alleged.

### **LEGAL PRECEDENT**

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>3</sup>

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the identified employment factors.<sup>4</sup>

### **ANALYSIS**

OWCP denied appellant's hearing loss claim finding that he failed to establish fact of injury. Appellant purportedly had not responded to OWCP's repeated requests for information. OWCP's September 25, 2015 decision listed a number of documents received, but did not otherwise describe the specific information included in the referenced documents.

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>5</sup> It is found that OWCP did not closely examine the content of appellant's June 15, 2015 hearing loss questionnaire, and the similarly dated form entitled *Evidence Required in Support of a Claim for Work-Related Hearing Loss*. The two

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<sup>3</sup> 20 C.F.R. § 10.115(e), (f) (2014); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

<sup>4</sup> *Victor J. Woodhams, id.*

<sup>5</sup> 20 C.F.R. § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

forms, signed by appellant, included much of the same information requested by OWCP on July 24, 2015. Appellant had already provided the information sought by OWCP.<sup>6</sup> The above-noted documents included specific information about appellant's employment exposure, hobbies, prior hearing problems and/or treatment, use of protective equipment, and the existence of any prior hearing-related claims. In determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.<sup>7</sup>

OWCP's procedures further specify that a final decision of OWCP must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it.<sup>8</sup> Accordingly, the Board finds that OWCP failed to consider and make findings regarding relevant evidence it received prior to the issuance of the September 25, 2015 decision. Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.<sup>9</sup> As it failed to address all relevant evidence before it at the time, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

### **CONCLUSION**

The case is not in posture for decision.

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<sup>6</sup> Moreover, some of the requested information was already provided on Form CA-2.

<sup>7</sup> 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

<sup>8</sup> See *K.Y.*, Docket No. 15-1377 (issued October 15, 2015); see also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>9</sup> *Willard McKennon*, 51 ECAB 145 (1999).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 25, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: January 27, 2016  
Washington, DC

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

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

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