

performance of duty on or before September 1, 2013. He explained that he first became aware of his hearing loss during a September 1, 2013 audiometric evaluation as part of an employing establishment hearing conservation program. Appellant retired from the employing establishment on July 1, 2015.

Appellant submitted annual employing establishment audiograms from June 1984 through June 24, 2015. These audiograms show a progressive, bilateral, nonratable hearing loss. A June 24, 2015 audiogram showed decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) in the right ear of 15, 5, 15, and 20, respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 20, 10, 30, and 20 respectively.²

On September 8, 2015 OWCP requested that appellant provide a detailed history of his federal and nonfederal employment, sources of hazardous noise, duration of exposure, and the use of hearing protection. It also requested that the employing establishment provide a history of appellant's hazardous noise exposure.

Appellant provided a May 15, 2015 employment history and September 14, 2015 letter, noting that prior to working at the employing establishment he was exposed to shop noise in 1974 as a tire mechanic. From 1979 to 1999, he worked at the employing establishment as a rigger, with exposure to "chainfalls, grinders, shipping guns, needle guns, diesel engines, pumps, cranes, and forklifts." Appellant wore hearing protection provided by the employing establishment. From 1999 through his retirement on June 30, 2015, he worked as a long bronc operator at the employing establishment, with exposure to boat engine noise for eight hours a day. Appellant asserted that the employing establishment did not provide hearing protection.

In a May 27, 2015 letter, appellant's supervisor affirmed that from 1999 to 2015 appellant was exposed to noise from engines, chippers, sanders, and the shipyard environment. Hearing protection was available. In a September 17, 2015 letter, the supervisor noted that the information appellant provided on his Form CA-2 was correct. An employing establishment safety official noted on September 21, 2015 that a 2011 industrial hygiene survey listed noise dosimetry results from February 6, 2009 for five individuals on "log broncs" or light tug vessels. The eight-hour time-weighted averages ranged from 79.5 to 84.9 decibels.

On January 26, 2016 OWCP obtained a second opinion from Dr. Gerald G. Randolph, a Board-certified otolaryngologist. Dr. Randolph reviewed the medical record and a statement of accepted facts. He obtained an audiogram showing decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 20, 10, 20, and 25, respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 20, 10, 35, and 35 respectively. Tympanometry was within normal limits bilaterally. Dr. Randolph diagnosed a bilateral sensorineural hearing loss. He opined that appellant's occupational noise exposure prior to 1999 was not of sufficient intensity or duration to cause a hearing loss as he utilized hearing protection. Dr. Randolph found that since 1999, "it appeared [appellant] has been employed in areas where noise exposure has not been a significant hazard" because "noise dosimetry studies failed to reveal time-weighted averages above 85 decibels." He opined that the "sloping-type nature of [appellant's] hearing loss suggest[ed] that the hearing loss is largely due to a

² Appellant also submitted a May 15, 2015 audiometric evaluation performed by a private hearing aid clinic.

combination of his diabetes mellitus with hypertension and possibly to some extent the aging process.” Dr. Randolph therefore concluded that appellant’s hearing loss was not due to occupational noise exposure, as it developed after he “was removed from areas of significant noise exposure” in 1999. He recommended bilateral hearing aids. Dr. Randolph noted that the “need for hearing aids, [was] likely due to causes other than his industrial noise exposure.”

By decision dated February 22, 2016, OWCP denied the claim, finding that causal relationship had not been established, based on Dr. Randolph’s report as the weight of the medical evidence. It accepted appellant’s account of noise exposure as factual. OWCP found, however, that Dr. Randolph’s report was sufficient to establish that appellant’s occupational noise exposure was not employment related.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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.³ These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

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.⁵

Appellant has the burden of establishing by the weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁶ 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.⁷

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

³ *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ 5 U.S.C. § 8122(a).

⁶ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁷ *See John W. Butler*, 39 ECAB 852, 858 (1988).

presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁹ 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.¹⁰ 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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹¹

Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues presented in the case.¹²

ANALYSIS

OWCP accepted that appellant was exposed to hazardous noise at the employing establishment from 1979 until his retirement on June 30, 2015. The primary issue in this case is whether appellant met his burden of proof to establish an employment-related hearing loss.

In development of this claim OWCP obtained a second opinion from Dr. Randolph. Dr. Randolph was provided with a copy of the medical records and a statement of accepted facts. He obtained an audiogram which showed decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 20, 10, 20, and 25, respectively. Testing at the same frequencies in the left ear revealed decibel losses of 20, 10, 35, and 35. Tympanometry was within normal limits bilaterally. In response to questions submitted with the referral, Dr. Randolph noted that there was not a significant variation of the history of noise exposure from that included in the statement of accepted facts. He further noted that the audiogram he performed revealed a sloping bilateral sensorineural hearing loss compatible with hearing loss due to a combination of presbycusis and his diabetes mellitus with hypertension. Dr. Randolph opined that the accepted workplace exposure was of sufficient intensity and duration prior to 1999 to have caused and/or aggravated loss of hearing. He added that since 1999 appellant was employed in areas where noise exposure had not been a significant hazard. Dr. Randolph also opined that appellant's diabetes with hypertension was likely an aggravating factor to his hearing loss. He concluded by finding that appellant's sensorineural hearing loss was not causally related to the accepted noise exposure from his federal employment and that although he is a candidate for hearing aids they are needed for causes other than his accepted work exposures.

⁸ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁹ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

¹² *Richard F. Williams*, 55 ECAB 343, 346 (2004).

The Board finds that the January 26, 2016 report of Dr. Randolph is insufficient on the issue of causal relationship as his opinion is not well reasoned and is inconsistent. Dr. Randolph acknowledged appellant's occupational noise exposures, but concluded that appellant's hearing loss was not employment related because it was "largely" due to diabetes, hypertension, and presbycusis.¹³ However, he also provided a contradictory opinion that the accepted workplace noise exposure was of sufficient intensity and duration prior to 1999 to have caused and/or aggravated hearing loss. Dr. Randolph failed to provide any rationale or explanation for these disparate findings on the issue of causal relationship. The inconsistent and equivocal nature of his opinion reduces its probative value.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.¹⁵ The Board finds that this case is not in posture for decision and shall be remanded for further development. On remand, OWCP should obtain a supplemental opinion regarding the issue of whether the accepted workplace exposure was sufficient in intensity and duration to be a cause or contributing factor to the hearing loss identified, as well as the need for hearing aids.¹⁶ After such further development as it deems necessary, OWCP shall issue a *de novo* decision.

On appeal, appellant contends that his hearing loss was caused, in part, by continuous exposure to hazardous noise at the employing establishment for 36 years. He asserts that he was exposed to continuous noise at work as a small craft operator from 1999 through 2015. Appellant notes that the employing establishment did not conduct noise surveys until 2011, after four-stroke engines were in use. He explains that before 2011, the craft used two-stroke diesel engines which were significantly louder. As set forth above, the case will be remanded for additional development.

CONCLUSION

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

¹³ There is no appointment under FECA. *See C.J.*, Docket No. 15-1295 (issued November 24, 2015). *Beth P. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

¹⁵ *P.K.*, Docket No. 08-2551 (issued June 2, 2009).

¹⁶ *See Glenn C. Chasteen*, 42 ECAB 493 (1991); *Beth P. Chaput*, *supra* note 13 (where the medical evidence reveals that factors of employment contributed in any way to the disabling condition, such condition is considered employment related for the purpose of compensation under FECA).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case remanded for additional development consistent with this opinion.

Issued: July 25, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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