

FACTUAL HISTORY

On October 28, 2015 appellant, then a 56-year-old retired woodworker, filed an occupational disease claim (Form CA-2) alleging that on June 1, 2015 she first became aware of her bilateral hearing loss and realized that her condition was caused or aggravated by her federal employment.

By letter dated November 3, 2015, OWCP notified appellant of the deficiencies of her claim and afforded her 30 days to submit medical and factual evidence. It requested that the employing establishment respond to her allegations and provide a copy of all medical examinations pertaining to her hearing or ear problems, including any preemployment examinations and audiograms.

OWCP received employment records from the employing establishment. Appellant worked in various positions with the employing establishment since September 3, 1985. She worked as a woodworker for several employing establishment agencies since July 23, 2006. A description of appellant's woodworker position noted her duties, responsibilities, and exposure to high noise levels. A notification of personnel action (SF 50-B) dated October 30, 2015 indicated that she had retired effective that date. Audiograms performed by the employing establishment as part of a hearing conservation program dated October 27, 1989 to April 30, 2015 were submitted.

By letter dated November 25, 2015, the employing establishment controverted the claim and noted that appellant worked five months as a woodworker at the employing establishment from June 14 to October 30, 2015. It noted that she was no longer an employee. The employing establishment stated that appellant was in a hearing conservation program from 1989 until her retirement.

In an investigative memorandum dated November 10, 2015, the employing establishment stated that appellant had general exposure to noise from September 3, 1985 to October 30, 2015.

On December 1, 2015 appellant provided her employment history, which indicated that she was exposed to noise from 1981 to 1984 during her non-federal employment and from 1987 to 2015 while working at the employing establishment.

By letter dated December 28, 2015, OWCP informed appellant that a second opinion evaluation was scheduled with Dr. Julie A. Gustafson, a Board-certified otolaryngologist, for January 14, 2016 at 12:00 a.m.

In a January 14, 2016 medical report, Dr. Gustafson noted appellant's complaint of hearing loss without tinnitus, examined her, reviewed her medical records, and analyzed the results of an audiogram performed on that date. She diagnosed appellant with sensorineural hearing loss that was probably genetic. Dr. Gustafson noted that her configuration of hearing loss was inconsistent with noise exposure. She found that it had "a cookie bite" type formation, which was most consistent with a genetic or hereditary loss. Dr. Gustafson advised that genetic and hereditary losses did not need to be associated with a clear family history of hearing loss. She found no acceleration of high frequency hearing loss that would be normally seen with a

noise-induced loss. Appellant had low and mid-frequency loss at the time she began work at the employing establishment and it advanced slowly over time irrespective of the level of noise exposure. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), Dr. Gustafson found that appellant had no ratable hearing loss. Appellant also had no impairment due to tinnitus as she did not complain about this condition. Dr. Gustafson recommended bilateral hearing aids for appellant's sensorineural hearing loss which had an unknown etiology, but again noted that it was probably genetic. She opined that the workplace exposure as described in materials provided by appellant, was not of sufficient intensity and duration to have caused or contributed to the hearing loss in question. Dr. Gustafson noted that the workplace exposure did not add to her hearing loss from other conditions. She concluded that appellant's sensorineural hearing loss was not due to noise exposure in her federal employment. Dr. Gustafson maintained that her opinion was supported by the occupational audiometric record and configuration of appellant's hearing loss.

In a January 25, 2016 decision, OWCP denied appellant's hearing loss claim. It found that Dr. Gustafson's opinion constituted the weight of the evidence and established that she did not have hearing loss due to her accepted employment-related noise exposure.

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, that the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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) 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 a claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated 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

² Gary J. Watling, 52 ECAB 357 (2001).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.³

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 the condition was caused, precipitated or aggravated by his employment, is sufficient to establish a causal relationship.⁴ The mere fact that a disease or condition manifests itself or worsens during a period of employment⁵ or that work activities produce symptoms revelatory of an underlying condition⁶ does not raise an inference of causal relation between the condition and the employment factors.

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (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 evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

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.⁸

ANALYSIS

The Board finds that appellant has not established that she sustained binaural hearing loss causally related to her federal employment noise exposure.

Appellant submitted results from audiometric testing performed October 27, 1989 to April 30, 2015 by audiologists were submitted as part of the hearing conservation program at work, but the audiograms alone are insufficient to establish her hearing loss as causally related to her federal employment as they do not comply with the requirements set forth by OWCP. These tests were not prepared or certified as accurate by a physician as defined by FECA. None of the audiograms were accompanied by a physician's opinion addressing how appellant's

³ *Solomon Polen*, 51 ECAB 341 (2000).

⁴ *Robert G. Morris*, 48 ECAB 238-39 (1996); *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁵ *William Nimitz, Jr.*, *id.*

⁶ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

⁷ *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *See I.J.*, 59 ECAB 408 (2008); *see also Victor J. Woodhams*, 41 ECAB 345 (1989).

employment-related noise exposure caused or aggravated any hearing loss.⁹ OWCP is not required to rely on this evidence as it does not constitute probative medical opinion evidence and is insufficient to meet appellant's burden of proof.¹⁰

Following the submission of evidence from appellant, OWCP referred appellant for an audiological and otologic evaluation by Dr. Gustafson. In a January 14, 2016 report, Dr. Gustafson examined appellant, reviewed her medical records, and analyzed the results of an audiogram performed on that date. She diagnosed appellant with sensorineural hearing loss, but found that her hearing loss was not related to noise exposure in her federal employment. Dr. Gustafson explained that the workplace exposure, as described by appellant, was not of sufficient intensity and duration to have caused or contributed to her diagnosed hearing loss. She further explained that appellant's hearing loss was genetic as she had "a cookie bite" type formation, which was most consistent with a genetic or hereditary loss. Dr. Gustafson maintained that her opinion on causal relationship was supported by the occupational audiometric record and configuration of appellant's hearing loss. She provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's federal employment.

There is no current medical evidence of record supporting that appellant's hearing loss is employment related. The Board finds that Dr. Gustafson's report represents the weight of the medical evidence.¹¹ Appellant has failed to establish that her binaural hearing loss was due to her federal employment.

On appeal appellant contends that she sustained a work-related hearing loss as Dr. Gustafson's report did not provide rationale to support her opinion that she did not sustain hearing loss related to her exposure to loud noise. As noted above, it is appellant's burden to submit medical evidence to support the issue of causal relationship.¹² As she has not submitted any medical evidence definitively establishing that her hearing loss is due to factors of her employment, she has not established her 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 has not met her burden of proof to establish binaural (both ears) hearing loss causally related to her federal employment.

⁹ See *Leon Thomas*, 52 ECAB 202 (2001) (an audiologist is not considered a "physician" under FECA).

¹⁰ *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

¹¹ See *John D. Jackson*, 55 ECAB 465 (2004).

¹² See *supra* note 10.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 10, 2016
Washington, DC

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

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

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