



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as presented in the prior appeal are incorporated herein by reference. The relevant facts are as follows.

On August 23, 2013 appellant, then a 58-year-old retired distribution machine operator, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss and tinnitus as a result of exposure to noise until his retirement on January 20, 2013. He stated that he had become aware of his condition and of its relationship to his employment on January 20, 2013.

In a report dated February 18, 2013, Dr. Natasha Pollak, a Board-certified otolaryngologist, diagnosed mild-to-moderate high frequency sensorineural hearing loss of the left ear. She noted that appellant's right ear was deaf with no word recognition, but that its etiology was uncertain. Dr. Pollak noted that appellant's deaf right ear could represent end-stage Ménière's disease, but that other etiologies were possible. She noted that appellant was diagnosed with right ear Ménière's disease 20 years ago, along with right-sided tinnitus, and has had no hearing in his right ear for approximately 20 years.

OWCP referred appellant, along with a statement of accepted facts, to Dr. Emil Liebman, a Board-certified otolaryngologist, for a second opinion evaluation. In a February 19, 2014 report, Dr. Liebman diagnosed bilateral sensorineural hearing loss, with profound loss on the right. He opined that appellant's left-sided hearing loss was due to noise exposure in appellant's federal civilian employment, but that his right-sided hearing loss was not due to work-related noise exposure. Rather, it was due to long-term Ménière's disease.

OWCP forwarded Dr. Liebman's report to a district medical adviser (DMA) for review. The DMA noted, "Based upon noise exposure during federal employment, a [schedule award] is indicated for the left ear only. The right ear hearing loss is due to Ménière's disease and is not due to loud noise injury."

By decision dated April 30, 2014, OWCP accepted appellant's claim for left-sided noise induced hearing loss. By letter dated June 6, 2014, it explained that his claim had been accepted only for left-sided hearing loss because appellant had preexisting Ménière's disease of the right ear. By decision dated August 14, 2014, OWCP issued a schedule award for two percent monaural hearing loss of appellant's left ear.

On August 18, 2014 counsel appealed to the Board, arguing that OWCP was required to issue a final decision with appeal rights as to denial of appellant's right-sided hearing loss. By decision dated November 20, 2015, the Board found that appellant had not established more than two percent left monaural hearing loss, noting that it did not have jurisdiction over denial of appellant's right-sided hearing loss, because a final adverse decision had not been issued. However, the Board noted that OWCP should issue a final decision as to appellant's right-sided hearing loss, with findings of fact and appropriate appeal rights.

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<sup>3</sup> Docket No. 14-1856 (issued November 20, 2015).

By letter dated November 24, 2015, counsel again requested that OWCP issue a final decision as to the issue of appellant's right-sided hearing loss, noting that the Board had found that it lacked jurisdiction over the issue of right-sided hearing loss without a final adverse decision from OWCP. He argued that appellant's right-sided hearing loss had worsened over time due to noise exposure compared to earlier testing.

By decision dated December 16, 2015, OWCP issued a final adverse decision denying appellant's claim for right ear hearing loss and right ear tinnitus. It explained that the medical evidence from appellant's physicians, from the second opinion examiner, and from the district medical adviser indicated that appellant's right-sided hearing loss was due to Ménière's disease and that appellant had no hearing in his right ear and occasional tinnitus since 1993. OWCP determined that appellant had not provided sufficient evidence to establish that his right-sided hearing loss was related to factors of his federal employment.

### **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.<sup>4</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

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) 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 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.

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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> *Gary J. Watling*, 52 ECAB 278, 279 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Michael E. Smith*, 50 ECAB 313, 315 (1999).

<sup>6</sup> *See D.Y.*, Docket No. 16-0767 (issued July 25, 2016).

<sup>7</sup> *Id.*

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable 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 nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>9</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established that his monaural hearing loss of the right ear and tinnitus of the right ear are causally related to factors of his federal employment.

In a report dated February 18, 2013, Dr. Natasha Pollak, a Board-certified otolaryngologist, diagnosed mild-to-moderate high frequency sensorineural hearing loss of the left ear. She noted that appellant's right ear was deaf with no word recognition, but that its etiology was uncertain. Dr. Pollak noted that his deaf right ear could represent end-stage Ménière's disease, but that other etiologies were possible. She noted that appellant was diagnosed with right ear Ménière's disease 20 years ago, along with right-sided tinnitus, and has had no hearing in his right ear for approximately 20 years.

In a February 19, 2014 report, Dr. Liebman diagnosed bilateral sensorineural hearing loss, with profound loss on the right. He opined that appellant's left-sided hearing loss was due to noise exposure in appellant's federal civilian employment, but that his right-sided hearing loss was not due to work-related noise exposure. Instead, Dr. Liebman noted that it was due to long-term Ménière's disease. OWCP then forwarded Dr. Liebman's report to a DMA for review. The DMA noted, "Based upon noise exposure during federal employment, a [schedule award] is indicated for the left ear only. The right ear hearing loss is due to Ménière's disease and is not due to loud noise injury."

There was no medical evidence before OWCP at the time of its December 16, 2015 decision indicating that appellant's right-sided hearing loss and right-sided tinnitus were work related. The only medical evidence containing definitive opinions regarding appellant's right-sided hearing loss and right-sided tinnitus clearly notes that appellant's condition was due to Ménière's disease, and that it was unrelated to factors of his federal employment. Appellant has not submitted any medical evidence supportive of a causal relationship between his federal employment and his hearing loss, and thus has not met his burden of proof to establish such a

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<sup>8</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117, 123 (2005).

<sup>9</sup> *Leslie C. Moore*, 52 ECAB 132, 134 (2000).

<sup>10</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

causal relationship. While counsel points to audiometric testing indicating that appellant's hearing loss worsened, there are no medical reports or medical opinions of record from physicians interpreting appellant's audiometric testing of the right ear as indicating work-related hearing loss due to aggravation of his preexisting condition. As previously noted, 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.<sup>11</sup>

As such, the Board finds that the medical evidence of record does not establish that appellant sustained right-sided hearing loss and right-sided tinnitus causally related to his employment. 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 his condition was caused, precipitated, or aggravated by his employment, is sufficient to establish causal relationship.<sup>12</sup> Causal relationship must be established by rationalized medical opinion evidence.<sup>13</sup> As found, the medical evidence is insufficient to establish appellant's claim. Consequently, OWCP properly found that appellant did not meet his burden of proof in establishing his 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 did not meet his burden of proof to establish that his monaural hearing loss of the right ear and tinnitus of the right ear were causally related to factors of his federal employment.

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<sup>11</sup> *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

<sup>12</sup> *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>13</sup> *Supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 6, 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