

**United States Department of Labor
Employees' Compensation Appeals Board**

R.W., Appellant

and

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Norfolk, VA, Employer**

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**Docket No. 15-0345
Issued: September 20, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 24, 2014 appellant filed a timely appeal from a September 11, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his consequential injury claim. Pursuant to the Federal Employees' Compensation Act¹ (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 established a consequential injury of tinnitus causally related to his employment-related hearing loss.

FACTUAL HISTORY

On January 12, 2001 appellant, then a 47-year-old deck mechanic, filed an occupational disease claim alleging that he sustained hearing loss as a result of excessive noise in the workplace. He first became aware of his condition and realized it resulted from his employment on July 17, 2000. Appellant had been disabled from work since June 5, 1998 due to a previous

¹ 5 U.S.C. § 8101 *et seq.*

traumatic injury.² OWCP accepted his claim for noise-induced hearing loss and paid wage-loss and medical benefits. Appellant was granted a schedule award of six percent permanent impairment for bilateral hearing loss.

On November 30, 2012 appellant requested information *via* telephone regarding how to expand his case to include tinnitus.

In an April 26, 2013 report, Dr. T. Oma Hester, a Board-certified otolaryngologist, examined appellant for complaints of increasing bilateral ringing tinnitus. Appellant stated that the tinnitus was constant and prevented him from sleep. Dr. Hester related that appellant had a history of loud noise exposure, which included working in the military and around heavy equipment and diesel engines for about 14 years. He also noted that appellant had hearing tests over the years which revealed a mild-to-moderate downsloping sensorineural loss into the higher frequencies with some recovery after a peak loss at 4,000 Hz. Upon examination, Dr. Hester observed clear bilateral ear canals and translucent and mobile tympanic membranes. He diagnosed bilateral sensorineural hearing loss and tinnitus.

In a May 2, 2013 report, Dr. Hester stated that appellant had mild-to-moderate sensorineural hearing loss, with a peak loss at 4,000 Hz, consistent with a noise-induced pattern. He also noted that appellant had a significant amount of loud noise exposure in the workplace during his time in the military over 14 years.

On July 17, 2013 appellant again requested *via* telephone that OWCP expand his claim to include tinnitus.

By letter dated July 17, 2013, OWCP advised appellant that medical evidence was needed to expand the accepted conditions in his claim. It advised that appellant's physician provide a medical statement showing that his new condition was part of the original July 17, 2000 hearing loss injury, that the new condition was caused by the accepted work-related hearing loss, or that his new condition was caused by the treatment of the accepted injury.

In a January 2, 2014 report, Dr. Hester related appellant's complaints of constant bilateral ringing tinnitus. He noted that appellant had a history of loud noise exposure from working in the military and around heavy equipment and diesel engines for approximately 14 years. Dr. Hester related that appellant had hearing tests performed over the years which showed a mild-to-moderate downsloping sensorineural loss in the higher frequencies. He reported that a March 20, 2013 audiogram demonstrated mild to borderline flat sensorineural hearing loss up to 2,000 Hz and a slight drop at 4,000 Hz with some recovery at 8,000 Hz. Dr. Hester stated that appellant's hearing tests over a series of years showed evidence of primarily isolated high-frequency loss with some recovery after a peak drop at 4,000 Hz. He opined that appellant's tinnitus complaints were most likely related to the hearing loss and a direct result of the hearing loss itself.

In a decision dated April 11, 2014, OWCP denied appellant's claim for tinnitus as a result of his employment-related hearing loss. It found that the medical evidence was insufficient to establish that tinnitus was causally related to his employment hearing loss.

² Appellant has a previously accepted traumatic injury case (File No. xxxxxx423) for an April 14, 1997 injury.

On June 11, 2014 appellant requested reconsideration. He submitted an April 11, 2014 audiology evaluation which revealed a mild-to-moderate hearing loss in each ear. The audiologist noted that appellant's hearing thresholds had been stable since March 20, 2013.

In a May 19, 2014 report, Dr. Hester related that appellant continued to have problems with bilateral ringing-type tinnitus. He noted that appellant had bilateral sensorineural hearing loss due to loud noise exposure while employed for the Department of Labor. Upon examination, Dr. Hester observed clear ear canals and translucent and mobile tympanic membranes. He related that an April 11, 2014 hearing test demonstrated a bilateral mild-to-moderate sensorineural hearing loss with a peak loss at 4,000 Hz and some recovery beyond. Dr. Hester explained that it was very difficult to determine the cause of tinnitus. He stated that it was an extremely common problem that was believed to be related to sensorineural hearing loss. Thus, Dr. Hester concluded that appellant's tinnitus was related to his sensorineural hearing loss, which was related to the employment factors of loud noise exposure.

By decision dated September 11, 2014, OWCP denied modification of the April 11, 2014 decision. It found that the medical evidence was insufficient to establish that appellant's tinnitus was a direct and natural result of his employment-related hearing loss.

LEGAL PRECEDENT

It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent, intervening cause attributable to the employee's own intentional conduct.³ The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁴ The Board has held that the subsequent progression of an employment-related condition "remains compensable so long as the worsening is not shown to have been produced by an independent nonindustrial cause."⁵

A claimant bears the burden of proof to establish a claim for consequential injury. As part of this burden, he must present rationalized medical opinion evidence, based on a complete medical and factual background, establishing causal relationship.⁶ 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.⁷

³ *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994); *John R. Knox*, 42 ECAB 193, 196 (1990).

⁴ See A. Larson, *The Law of Workers' Compensation* § 10.01 (November 2000).

⁵ *Raymond A. Nester*, 50 ECAB 173, 175 (1998); *Robert W. Meeson*, 44 ECAB 834, 839 (1993).

⁶ *R.C.*, Docket No. 10-1789 (issued April 22, 2001); *Jennifer Atkerson*, 55 ECAB 317 (2004).

⁷ *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

ANALYSIS

OWCP accepted appellant's claim for employment-related bilateral hearing loss. Appellant alleges that he sustained tinnitus as a consequence of his accepted employment injury. The Board finds that appellant has failed to submit sufficient medical evidence to establish tinnitus as causally related to his employment-related hearing loss.

In support of his consequential injury claim, appellant submitted various reports by Dr. Hester from April 26, 2013 to May 19, 2014. He stated that he treated appellant for complaints of increasing bilateral ringing tinnitus. Dr. Hester related that appellant had a history of loud noise exposure, working in the military and around heavy equipment and diesel engines for about 14 years. He also noted that appellant had hearing tests over the years which revealed a mild-to-moderate downsloping sensorineural loss into the higher frequencies with some recovery after a peak loss at 4,000 Hz. Upon examination, Dr. Hester observed clear bilateral ear canals and translucent and mobile tympanic membranes. He diagnosed bilateral sensorineural hearing loss and tinnitus. In his January 2, 2014 report, Dr. Hester opined that appellant's tinnitus complaints were most likely related to the hearing loss and a direct result of the hearing loss itself. His opinion, however, that appellant's tinnitus was "most likely related" to his hearing loss is speculative in nature. The Board has held that medical opinions that are speculative or equivocal in character are of diminished probative value.⁸ An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.⁹ The Board finds that Dr. Hester's opinion is insufficient to establish appellant's claim.

Furthermore, in a May 19, 2014 report, Dr. Hester related that appellant continued to have problems with bilateral ringing-type tinnitus. He noted that appellant had bilateral sensorineural hearing loss due to loud noise exposure while employed for the Department of Labor. Dr. Hester explained that it was very difficult to determine the cause of tinnitus and noted that it was an extremely common problem that was believed to be related to sensorineural hearing loss. He concluded that appellant's tinnitus was related to his sensorineural hearing loss, which was related to his loud noise exposure. Although Dr. Hester provided an opinion on causal relationship, the Board notes that he failed to offer any medical explanation as to how appellant's tinnitus resulted from his employment-related hearing loss.¹⁰ A medical opinion that states a conclusion but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹¹

The additional April 11, 2014 audiology evaluation is likewise insufficient to establish appellant's consequential injury claim. The report does not contain any diagnosis of tinnitus nor provide any opinion on whether appellant sustained tinnitus as a consequence of his employment-related hearing loss. The Board has held that medical evidence that does not offer

⁸ *D.D.*, 57 ECAB 734, 738 (2006); *Kathy A. Kelley*, 55 ECAB 206 (2004).

⁹ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

¹⁰ *See D.M.*, Docket No. 13-1798 (issued November 12, 2013); *see also R.K.*, Docket No. 10-415 (issued January 21, 2011).

¹¹ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹²

The Board notes that the A.M.A., *Guides* at section 11.2b, page 249¹³ states that, if the tinnitus interferes with the activities of daily living such as sleep, reading, enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measureable hearing impairment. Dr. Hester did not, in any of his reports, make a finding that tinnitus impacted appellant's ability to perform activities of daily living. Thus his rating for an additional impairment for tinnitus is not substantiated in this case.¹⁴

On appeal, appellant stated that Dr. Hester provided letters explaining in depth about his tinnitus to support his case. As discussed above, however, Dr. Hester's medical reports are insufficient to establish a consequential relationship between appellant's employment-related hearing loss and his claimed tinnitus.

The Board finds that appellant has failed to meet his burden of proof to establish tinnitus as a consequential injury as the medical evidence is insufficient.

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 tinnitus as a consequence of his employment-related hearing loss.

¹² *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, *supra* note 11; *A.D.*, *supra* note 11.

¹³ A.M.A., *Guides* 249.

¹⁴ *K.G.*, Docket No. 14-1827 (issued January 5, 2015).

ORDER

IT IS HEREBY ORDERED THAT the September 11, 2014 decision of the Office of Workers' Compensation Programs is affirmed.¹⁵

Issued: September 20, 2016
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁵ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.