



## ISSUE

The issue is whether appellant met his burden of proof to establish hearing loss causally related to the accepted factors of his federal employment.

## FACTUAL HISTORY

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 16, 2013 appellant, then a 53-year-old boilermaker, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss as a result of his federal employment. He first became aware of his condition on January 1, 2003 and realized that it resulted from his federal employment on April 4, 2013. Appellant reported that he first learned about his work-related hearing loss when he reviewed the April 4, 2013 report of Dr. William Logan, a Board-certified otolaryngologist. The employing establishment noted that appellant first reported the condition to his supervisor on May 21, 2013 and was last exposed to the conditions alleged to have caused his condition on January 30, 1989.

Appellant provided an undated statement with a detailed description of the dates and various locations where he worked as a boilermaker for the employing establishment.<sup>4</sup>

Dr. Logan noted in a March 19, 2013 report that appellant complained of hearing loss and that he had worked around loud noise for a number of years as a boilermaker. He reviewed appellant's history and conducted an examination. Dr. Logan reported no deformity or discharge of appellant's ears. He related that an audiogram revealed mild sensorineural hearing loss on the right at 500 hertz (Hz) and moderate hearing loss at 3,000 to 4,000 Hz rising back to mild at 6,000 Hz and a mild sensorineural hearing loss at 4,000 to 8,000 Hz on the left. Dr. Logan diagnosed sensorineural hearing loss. He recommended that appellant use ear protection around loud noise and avoid unnecessary exposure to loud noise.

Appellant provided an August 28, 2013 report by Whitney R. Mauldin, a Board-certified audiologist, who noted that appellant worked at numerous power plants and other companies for the past 24 years where he was exposed to excessive noise other than his federal employment. Dr. Mauldin indicated that, upon reviewing appellant's medical records, work history, and audiometric records, there was "no evidence of 'occurrence of event' to establish fact of injury and there was no causal relationship for his claim of work-related hearing loss due to federal employment." She explained that appellant had not been a federal employee since January 30, 1989 and had absolutely no exposure to any levels of noise as a federal employee for 24 years.

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<sup>3</sup> Docket No. 14-1616 (issued November 20, 2014).

<sup>4</sup> From March 12, 1979 to June 12, 1981, appellant worked at the Hartsville nuclear plant. From December 30, 1981 to March 19, 1982; April 2 to June 8, 1984; April 24 to May 23, 1986; and October 21 to November 23, 1987 he worked at the Widows Creek plant. From August 4 to December 17, 1982; July 15 to 31, 1983; January 4 to April 3, 1984; April 12 to 30, 1985; and August 30, 1985 to January 24, 1986 appellant worked at the Sequoyah plant. From 1979 to October 2007, he worked out of the Boilermakers Union. From 2007 to November 2010, appellant worked at various power plants.

Dr. Mauldin referenced an article from The American College of Occupational and Environmental Medicine and explained that hearing loss from occupational noise exposure occurred at the time of exposure, so there was no delayed effect or latency period. She also related that Dr. Logan did not make any connection between appellant's hearing loss and his federal employment 24 years ago. Dr. Mauldin indicated that appellant's first hearing examination dated 1978 revealed mild loss of 6,000 Hz at his left ear and normal hearing at his right ear. She reported that there were no significant changes on other examinations during any of appellant's intermittent employment.

Audiogram results dated February 16, 1978 to September 26, 1987 were submitted. Audiometric testing dated February 16, 1978 revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hz: 15, 10, 5, and 5 for the right ear and 15, 5, 10, and 5 for the left ear. Audiometric testing dated September 27, 1987, showed dB losses at 500, 1,000, 2,000, and 3,000 Hz of 10, 5, 5, and 15 for the right ear and 5, 5, 5, and 5 for the left ear.

OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Jack W. Aland, a Board-certified otolaryngologist, for a second opinion examination and an audiological evaluation to determine the extent of any noise-induced hearing loss related to his federal employment. In an August 26, 2013 report, Dr. Aland reviewed the SOAF, noted that appellant worked around "noise for years," but the work "was not all during [appellant's] federal civilian employment" and also noted that previous audiograms were not available for review. He provided examination findings and diagnosed neurosensory hearing loss. Dr. Aland checked a box indicating that appellant's hearing loss was "not due" to his federal employment. He explained that because hearing loss was only in the right ear, he "doubt[ed]" that it resulted from workplace exposure. An audiogram performed that day with testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses of the right ear as 15, 20, 30, and 50 respectively. Testing at the same frequency levels revealed dB losses of 20, 15, 30, and 30 of the left ear.

In a decision dated September 20, 2013, OWCP denied appellant's claim. It accepted that he was exposed to noise during his federal employment and a diagnosis of right sensorineural hearing loss, but denied his claim because the medical evidence of record failed to establish that his hearing loss was causally related to the accepted work-related noise exposure.

On October 21, 2013 appellant, through counsel, requested a telephone hearing before an OWCP hearing representative. The hearing was held on March 14, 2014. Appellant described his work as a boilermaker and his exposure to loud noise during his federal employment. He asserted that although the second opinion examiner opined that his hearing loss was not due to his federal employment, he did not adequately explain how or why his federal employment noise exposure was not a contributing factor of his hearing loss. Counsel alleged that OWCP could not rely on Dr. Almand's report, and instead, that OWCP should base its decision on Dr. Logan's March 19, 2013 report.

By decision dated May 21, 2014, an OWCP hearing representative affirmed the September 20, 2013 decision denying appellant's hearing loss claim. She found that there was no rationalized medical evidence in the record to establish that his hearing loss condition was causally related to his federal employment. The hearing representative determined that

Dr. Aland's August 26, 2013 second-opinion report constituted the weight of the medical evidence and established that appellant did not sustain any work-related hearing loss.

Appellant appealed to the Board on July 14, 2014. In a decision dated November 20, 2014, the Board set aside the May 21, 2014 OWCP decision. The Board found that Dr. Aland's August 26, 2013 report was not sufficiently rationalized to carry the weight of the medical evidence because he did not provide a complete and accurate history, nor a rationalized explanation of why appellant's diagnosed noise hearing loss was found to be nonwork related. The Board remanded the case for OWCP to prepare an amended SOAF and provide the entire case record, including the employing establishment's audiograms, to Dr. Aland to obtain a supplemental report regarding whether appellant's hearing loss was causally related to factors of his employment.

On remand OWCP prepared a new SOAF dated January 7, 2015, which included appellant's exposure to noise at the employing establishment and the length and period of such exposures. It referred the new SOAF and the entire case record to Dr. Aland for a supplemental report.

In a January 24, 2015 supplemental report, Dr. Aland opined that appellant's hearing loss from the 2013 visit was not causally connected to his federal civilian employment. He explained: "I do not feel the exposure to noise during his federal employment contributed in any way to his hearing loss." Dr. Aland noted that he came to these conclusions because, during the course of appellant's employment from 1978 to 1987, there was no progressive hearing loss at that time and it had been almost 20 years since the last hearing test in 1987, when he worked there.

In a *de novo* decision dated February 20, 2015, OWCP denied appellant's hearing loss claim because the medical evidence of record was insufficient to establish that his hearing loss was causally related to noise exposure during his federal employment. It found that the weight of medical opinion evidence rested with Dr. Aland.

On March 18, 2015 appellant requested another telephone hearing before an OWCP hearing representative. This hearing was held on October 7, 2015. Counsel alleged that OWCP should not have relied on Dr. Aland's January 24, 2015 report because it was not well rationalized and failed to adequately explain how or why appellant's hearing loss was not a result of his noise exposure in his federal employment. He further asserted that Dr. Logan provided a well-rationalized medical opinion that appellant's hearing loss was a result of noise exposure during his federal employment.

Counsel provided an October 5, 2015 report by Dr. Logan who noted that he reviewed his March 19, 2013 report along with an audiogram, appellant's CA-35b form, the transcript of the hearing date March 14, 2014, Dr. Aland's January 24, 2015 supplemental report, and documents regarding appellant's noise exposure over the years. Dr. Logan opined that the hearing loss that appellant had, when examined on March 19, 2013, was consistent with noise-induced hearing loss. He reported: "I feel that it is likely that to a reasonable degree of medical certainty, that [appellant's] occupational noise exposure with [the employing establishment] did contribute to the sensorineural hearing loss I found on my examination."

In a decision dated November 13, 2015, an OWCP hearing representative set aside the February 20, 2015 decision and remanded the case for further development. She found that Dr. Aland did not adequately explain why he found that appellant's hearing loss was not causally related to his federal noise exposure. The hearing representative determined that OWCP should refer appellant for a new audiological evaluation and second opinion examination by an otolaryngologist.

The employing establishment submitted a November 20, 2015 letter relating that it disagreed with OWCP's November 13, 2015 decision. It asserted that there was no evidence that appellant incurred any sort of hearing loss during his employment. The employing establishment noted that his audiograms reflected no standard threshold shift during his employment and normal hearing. It contended that appellant did not meet his burden of proof to establish that he had noise-related hearing loss due to his federal employment.

OWCP prepared an amended SOAF dated November 23, 2015 and referred appellant to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for another second opinion evaluation.

Dr. Goldberg completed an outline for otologic evaluation (Form CA-1332) dated December 15, 2015. He responded that there was no significant variation from the SOAF. Dr. Goldberg wrote "normal" when asked to comment on appellant's hearing at the beginning of his significant noise exposure in federal employment. He also responded "no" indicating that appellant did not show a sensorineural hearing loss in excess of what would be normally predicted on the basis of presbycusis and that the workplace exposure was not of sufficient intensity and duration to have caused the loss in question. Dr. Goldberg reported a normal physical examination of the canals, drum motility, and basic fork tests and diagnosed mild bilateral sensorineural hearing loss. He checked a box indicating that appellant's hearing loss was "not due" to noise exposure during his federal employment. Dr. Goldberg explained that there were no significant changes in appellant's hearing or audiograms from 1978 to 1987 and that they were all within normal range. He further reported that according to the present audiogram, appellant's hearing was normal for conversation range. An audiogram performed that day with testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed dB losses for the right ear as 15, 25, 30, and 55 respectively. Testing at the same frequency levels revealed dB losses of 15, 15, 15, and 40 for the left ear.

In a January 5, 2016 decision, OWCP again denied appellant's hearing loss claim. It found that the medical evidence of record was insufficient to establish that he sustained mild bilateral sensorineural hearing loss as a result of noise exposure during his federal employment. OWCP found that the weight of medical evidence rested with Dr. Goldberg who concluded in a December 15, 2015 Form CA-1332 that appellant's mild bilateral sensorineural hearing loss was not due to noise exposure during his federal employment.

On January 20, 2016 appellant requested an oral hearing before an OWCP hearing representative, which was held on September 16, 2016. Counsel related that Dr. Logan examined appellant on March 19, 2013 and determined that he had sensorineural hearing loss. He asserted that when applying Dr. Logan's audiogram findings to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A.,

*Guides*), appellant had 13.1 percent permanent impairment for monaural hearing loss of the right ear and 2.2 percent impairment for binaural hearing loss. Counsel contended that Dr. Goldberg relied on old audiograms for his opinion that appellant's hearing loss was not causally related to noise exposure during his federal employment. He noted that appellant had 15 months of noise exposure with the employing establishment after the September 16, 1987 audiogram. Counsel also reported that, when applying Dr. Goldberg's audiogram results to the A.M.A., *Guides*, appellant had 9.4 percent permanent impairment for right ear monaural hearing loss and 1.6 percent permanent impairment for binaural hearing loss. He contended that this should be considered a significant change in hearing on audiograms. Counsel also asserted that the law had established that, if any part of appellant's hearing loss was contributed to by his federal employment, he was entitled to payment of compensation. He further alleged that there was a conflict in medical opinion between Dr. Logan and Dr. Goldberg, which required referral to a referee physician.

By decision dated November 28, 2016, an OWCP hearing representative affirmed the January 5, 2016 decision. She found that the medical evidence of record was insufficient to establish that appellant's hearing loss was causally related to factors of his federal employment. The hearing representative determined that the weight of medical opinion evidence rested with Dr. Goldberg.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>6</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability from work for which he or she claims compensation is causally related to that employment injury.<sup>7</sup> In an occupational disease claim, appellant's burden of proof requires submission of the following: (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.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>9</sup> 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

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>7</sup> *M.M.*, Docket No. 08-1510 (issued November 25, 2010); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000).

<sup>9</sup> *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>10</sup>

### ANALYSIS

Appellant has alleged that he developed hearing loss due to noise exposure during his federal employment. OWCP accepted that he was exposed to hazardous noise at the employing establishment and was diagnosed with right ear hearing loss, but it denied his claim because the medical evidence of record was insufficient to establish that his hearing loss was causally related to the accepted factors of his federal employment.

Dr. Aland explained in his January 24, 2015 supplemental opinion that appellant's federal employment between 1978 and 1987 did not cause hearing loss because appellant's audiograms during that time period did not show any progressive hearing loss. An OWCP hearing representative found that Dr. Aland's report was not sufficiently rationalized and, therefore, obtained another second opinion from Dr. Goldberg.

Dr. Goldberg completed a Form CA-1332 dated December 15, 2015 and provided audiometric testing. He indicated that appellant did not show sensorineural hearing loss in excess of what would be normally predicted on the basis of presbycusis and that the workplace exposure was not of sufficient intensity and duration to have caused the loss in question. Dr. Goldberg reported a normal physical examination of the canals, drum motility, and basic fork tests and diagnosed mild bilateral sensorineural hearing loss. He related that appellant's hearing loss was "not due" to noise exposure during his federal employment. Dr. Goldberg explained that there were no significant changes in appellant's hearing or audiograms from 1978 to 1987 and that they were all within normal range.

The Board finds that Dr. Goldberg's opinion was based on a review of the evidence and supported by medical rationale explaining that appellant's hearing loss was not a result of noise exposure during his federal employment. Dr. Goldberg referenced current and previous audiometric test results and related that appellant's audiograms from his employment 1978 to 1987 were all within the normal range.<sup>11</sup> He, therefore, agreed with Dr. Aland's analysis and added that appellant's hearing loss was explained by presbycusis. Dr. Goldberg provided examination findings and a reasoned opinion explaining how appellant's hearing loss was not due to the noise exposure in his federal employment.<sup>12</sup> His December 15, 2015 report, therefore, was sufficient to establish that appellant did not sustain right-sided hearing loss causally related to factors of his federal employment.

In support of his claim for hearing loss, appellant submitted reports dated March 19, 2013 and October 5, 2015 wherein Dr. Logan related that appellant worked around loud noise for a number of years as a boilermaker. Dr. Logan reviewed appellant's history and provided physical

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<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>11</sup> *See A.C.*, Docket No. 16-0762 (issued June 22, 2016).

<sup>12</sup> *See M.I.*, Docket No. 16-0759 (issued June 10, 2016).

examination findings. He diagnosed sensorineural hearing loss. In an October 5, 2015 report, Dr. Logan opined that appellant's occupational noise exposure with the employing establishment contributed to his sensorineural hearing loss. Although he provided an affirmative opinion on causal relationship, the Board finds that he did not provide any medical rationale to support his conclusion that appellant's hearing loss was causally related to noise exposure during his federal employment. Dr. Logan did not explain why appellant's audiograms from 1978 to 1987, the period during which he was a federal employee, did not show any progression of hearing loss, if in fact his employment during this time period caused any hearing loss. A medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.<sup>13</sup> Dr. Logan's brief statement on the issue of causal relationship lacks adequate medical rationale to support that appellant's hearing loss was caused or contributed to by his employment.

On appeal, counsel alleges that OWCP's finding that appellant did not have hearing loss causally related to his federal employment was not supported by the evidence of record. He further asserts that, in the alternative, there was a conflict of medical opinion between Dr. Logan and Dr. Goldberg, and the claim should be referred to a referee examiner in order to resolve the conflict. As found above, however, Dr. Logan's medical opinion is of limited probative value to establish employment-related hearing loss as his opinion on causal relationship lacked medical rationale.<sup>14</sup> Because his medical opinion is of limited probative value, it is insufficient to create a conflict in medical opinion evidence.<sup>15</sup>

The Board finds that the medical evidence of record does not establish that appellant sustained right-sided hearing loss causally related to his employment. OWCP, therefore, properly found that he did not meet his burden of proof to establish 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. §§ 10.606 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish hearing loss causally related to factors of his federal employment.

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<sup>13</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *T.M.*, Docket No. 08-0975 (February 6, 2009).

<sup>14</sup> *See W.G.*, Docket No. 13-1917 (issued February 12, 2014).

<sup>15</sup> *C.H.*, Docket No. 16-1806 (issued March 9, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 28, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 8, 2017  
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