



condition and related it to his federal employment on October 14, 2003. Appellant worked full time at the employing establishment as a ship fitter mechanic from May 1979 to July 2003, ship fitter supervisor from July 2003 to January 2009, and structural zone manager from January 2009 to January 1, 2016. He indicated that he was exposed to various pneumatic tools, motors, and engine noises and wore earplugs during the course of his federal employment. Appellant retired on January 1, 2016.

In support of his claim, appellant submitted an audiogram dated October 23, 2015.

By letter dated February 16, 2016, the employing establishment controverted appellant's claim arguing that he had not timely filed his hearing loss claim and argued that he wore hearing protection during his employment.

In a February 19, 2016 letter, OWCP requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding his employment history, when he related his hearing loss to conditions of employment, and all nonoccupational exposures to noise. OWCP also requested that appellant provide medical documentation pertaining to any prior treatment he received for ear or hearing problems. It requested that the employing establishment provide noise survey reports for each site where he worked, the sources and periods of noise exposure for each location, and copies of all medical examinations pertaining to hearing or ear problems.

On February 25, 2016 appellant stated that his nonfederal employment included work as a warehouseman from January 1975 to May 1979 and a part-time ship fitter in May 1985. He indicated that he was exposed to noise at both jobs and did not wear any type of safety device.

OWCP referred appellant, a statement of accepted facts (SOAF), and the case record to Dr. Wayne Shaia, a Board-certified otolaryngologist, for a second opinion evaluation on April 4, 2016. Audiometric testing performed that same date revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz: 55, 65, 80, and 85 for the right ear and 20, 20, 20, and 20 for the left ear. The report established that appellant had 69.4 percent hearing loss in the right ear and no hearing loss in the left ear. Dr. Shaia diagnosed right sudden sensorineural hearing loss and opined that appellant's condition was not due to noise exposure encountered in his federal employment. He found no audiometric data available from the beginning of appellant's work-related noise exposure and explained that the hearing loss in the right ear was in excess of what would be normally predicted with presbycusis. Appellant stated that his hearing loss began suddenly in 2003 and did not return. He had sought medical attention and a magnetic resonance imaging (MRI) scan which was found to be normal. Dr. Shaia noted that appellant's hearing loss was unilateral in nature, not a noise-induced hearing loss pattern. He explained that it was unlikely that workplace noise exposure would cause appellant to lose hearing preferentially in one ear, as there was no inciting event for such loss. Dr. Shaia concluded that appellant had sustained a sudden sensorineural hearing loss in the right ear, which was unrelated to his federal employment.

By decision dated April 11, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that he sustained hearing loss causally related to his federal employment.

## LEGAL PRECEDENT

An original claim for compensation for disability or death must be filed within three years after the injury or death.<sup>2</sup> A claim filed outside this time frame must be disallowed unless the immediate superior had actual knowledge of the injury or death within 30 days.<sup>3</sup> In a case of latent disability, the time for filing a claim does not begin to run until the employee has a compensable disability and is aware or by the exercise of reasonable diligence should have been aware of the causal relationship of the compensable disability to his or her employment.<sup>4</sup> An employee with actual or constructive knowledge of an employment-related condition, who continues to be exposed to injurious working conditions, must file a claim within three years of the date of last exposure to the implicated conditions.<sup>5</sup> A positive test result from an employing establishment program of regular audiometric examinations is sufficient to establish knowledge of a hearing loss so as to put the immediate superior on notice of an on-the-job injury.<sup>6</sup>

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 timely filed within the applicable time limitation period of FECA, and that an injury<sup>7</sup> was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that his or her hearing loss was causally related to noise exposure in his federal employment.<sup>9</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>10</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit 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

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<sup>2</sup> *Id.* at § 8122(a).

<sup>3</sup> *Id.* at § 8122(a)(1).

<sup>4</sup> *Id.* at § 8122(b).

<sup>5</sup> *E.g.*, *James A. Sheppard*, 55 ECAB 515, 518 (2004); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6 (March 1993).

<sup>6</sup> *See James A. Sheppard, id.*; Federal (FECA) Procedure Manual, *id.* at Chapter 2.801.6c.

<sup>7</sup> OWCP regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>8</sup> *See O.W.*, Docket No. 09-2110 (issued April 22, 2010); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>9</sup> *See Stanley K. Takahaski*, 35 ECAB 1065 (1984).

<sup>10</sup> *See John W. Butler*, 39 ECAB 852, 858 (1988).

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>11</sup>

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.<sup>12</sup>

### ANALYSIS

Appellant claimed to have been aware of his employment-related hearing loss on or about October 14, 2003. However, based on his reported employment history, appellant's occupational noise exposure continued until his retirement, effective January 1, 2016. After retiring, appellant filed the current occupational disease claim on February 9, 2016, which was within three years of the date of last exposure to the implicated conditions.<sup>13</sup> Therefore, the Board finds that appellant's claim was timely filed.

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

The Board has recognized that a claimant may be entitled to a schedule award for hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.<sup>14</sup> The Board also notes that there is no requirement that the federal employment be the only cause of appellant's hearing loss. If work-related exposures caused, aggravated, or accelerated his condition, he is entitled to compensation.<sup>15</sup> In this case, however, there was no medical evidence before OWCP at the time of its April 11, 2016 decision containing an opinion that appellant's hearing loss was work related.

OWCP developed the medical evidence and referred appellant to Dr. Shaia for a second opinion examination. While he diagnosed right sudden sensorineural hearing loss, Dr. Shaia opined that appellant's hearing loss was not due to noise exposure in his federal employment. He found no audiometric data available from the beginning of appellant's work-related noise exposure and explained that the hearing loss in the right ear was in excess of what would be normally predicted with presbycusis. Appellant explained to Dr. Shaia that his hearing loss had begun suddenly in 2003 and did not return. He had sought medical attention, but the 2003 MRI scan was found to be normal. Audiometric testing performed on April 4, 2016 established that appellant had a 69.4 percent hearing loss in the right ear and no hearing loss in the left ear.

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<sup>11</sup> See *D.R.*, Docket No. 09-1723 (issued May 20, 2010).

<sup>12</sup> See *O.W.*, *supra* note 8.

<sup>13</sup> See *supra* note 5.

<sup>14</sup> See *J.R.*, 59 ECAB 710, 713 (2008).

<sup>15</sup> See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

Dr. Shaia noted that appellant's hearing loss was unilateral in nature, which is not a noise-induced hearing loss pattern. He explained that it was unlikely that workplace noise exposure would cause appellant to lose hearing preferentially in one ear, as there was no inciting event to account for this. Dr. Shaia concluded that appellant sustained a sudden sensorineural hearing loss in the right ear, which was unrelated to his federal employment.

In support of his claim, appellant submitted an audiogram dated October 23, 2015. This report is of limited probative value and insufficient to establish the claim as it does not specifically address whether his diagnosed conditions are causally related to his workplace noise exposure.<sup>16</sup> The Board finds that 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 causal relationship.<sup>17</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>18</sup> In the instant case, the record is without rationalized medical evidence establishing causal relationship between appellant's occupational noise exposure and his hearing loss. Thus, appellant has failed to meet his burden of proof.

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 his burden of proof to establish hearing loss causally related to factors of his federal employment.

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<sup>16</sup> See *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>17</sup> See *R.S.*, Docket No. 14-1995 (issued February 25, 2015).

<sup>18</sup> See *M.H.*, Docket No. 16-0228 (issued June 8, 2016).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 11, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 20, 2017  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board