

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

C.T., Appellant)

and)

DEPARTMENT OF THE NAVY, NAVAL SEA)
SYSTEMS COMMAND-STATIONS,)
Keyport, WA, Employer)

**Docket No. 16-1641
Issued: March 2, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 9, 2016 appellant filed a timely appeal from a May 9, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

ISSUE

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

On appeal appellant contends that his exposure to hazardous noise for more than 35 years and the medical evidence establishes that his hearing loss was work related.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 10, 2015 appellant, then a 68-year-old retired ordnance equipment supervisor, filed an occupational disease claim (Form CA-2) attributing his bilateral hearing loss to noise exposure at work. He stated that he first became aware of the condition and its connection to his employment on January 1, 1993. On the back of the claim form, the employing establishment noted that appellant retired on August 1, 1993 and that the condition was first reported to a supervisor on September 28, 2015.

By letter dated October 14, 2015, OWCP requested that appellant submit further information in support of his claim. Appellant was advised as to the medical and factual evidence required to establish a claim and afforded 30 days to provide this information.

In response to the October 14, 2015 letter, appellant provided information with regard to his prior employment, military service, and other exposure to noise. He noted that he was last exposed to hazardous noise in 1993 and that he first noticed the hearing loss on January 1, 1993. Appellant noted that he had not filed a prior claim for a hearing loss.

OWCP also received the results of prior audiograms conducted for the employing establishment during the period September 24, 1969 to June 7, 1993. Copies of the employing establishment's chronological record of medical care for appellant covering the period June 20, 1973 to June 7, 1993 were also submitted. The medical care records note various instances of noise exposure.

On February 4, 2016 OWCP referred appellant to Dr. Gerald Randolph, a Board-certified otolaryngologist, for an otologic examination and audiological evaluation. In a March 1, 2016 report, Dr. Randolph noted a history of noise exposure at work, his review of the statement of accepted facts and medical record, and appellant's complaint of progressive bilateral hearing loss for the past 10 years. He described physical examination findings and analyzed the results of an audiogram performed on that date.² Dr. Randolph diagnosed bilateral sensorineural hearing loss compatible with hearing loss due to noise exposure. He noted appellant's hearing loss was compatible with noise exposure, but noted that appellant left federal service on August 1, 1993 and that a June 7, 1993 audiogram did not show any ratable hearing loss. Dr. Randolph also noted that appellant's current hearing loss was in excess of what would have been normally predicted on the basis of presbycusis and appellant's workplace exposure was of significant intensity and duration to have aggravated hearing loss, if ear protection had been inadequately utilized. Dr. Randolph concluded that appellant's audiogram revealed hearing loss with audiometric configuration entirely compatible with hearing loss due to noise exposure.

Dr. Randolph explained that appellant's hearing loss degenerated significantly since retiring and that he failed to find other significant factors for the hearing loss. He advised that appellant had binaural hearing loss of 18 percent. Dr. Randolph, on page 6 of his report, checked a box marked "Due" with regard to the question of whether appellant's hearing loss was work

² The audiogram demonstrated decibel levels at 500, 1,000, 2,000 and 3,000 hertz with left ear -- 10, 25, 55, and 55 and monaural hearing loss of 16.875 percent; and right ear 10, 30, 55, and 55. The left monaural hearing loss was 16.875 percent and the right monaural hearing loss was 22.50 percent.

related, but page 11 of the same report, Dr. Randolph crossed out where he had initially checked “Due,” and circled the checked “Not Due” box.

By letter dated March 23, 2016, OWCP requested clarification from Dr. Randolph regarding the conflicting opinion given regarding causation. It noted that the narrative portion of the report found that appellant’s hearing loss was not work related while under the opinion section, in one instance, the “Due” box was checked.

In a supplemental report dated May 3, 2016, Dr. Randolph provided clarification as requested by OWCP and opined that appellant’s hearing loss was not employment related. He noted that his initial checking the “Due” box was a typographical error.

By decision dated May 9, 2016, OWCP denied appellant’s claim, finding that he failed to establish that his hearing loss was causally related to his federal employment. It accepted that appellant was a federal civilian employee who filed a timely claim that the employment factors occurred as alleged, that a medical condition had been diagnosed, and that appellant was within the performance of duty. However, OWCP found the medical evidence of record insufficient to establish that the diagnosed hearing loss had been caused or aggravated by appellant’s federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

Appellant has the burden of proof to establish 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.⁶ 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.⁷

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

³ *Supra* note 1.

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁷ *See John W. Butler*, 39 ECAB 852, 858 (1988).

presence or existence of the disease or condition for which compensation is claimed;⁸ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition,⁹ and (3) medical evidence establishing 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.¹⁰

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.¹¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.¹² 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.¹³

ANALYSIS

Appellant alleged bilateral hearing loss due to noise exposure at his federal employment. OWCP accepted that the claim was timely filed,¹⁴ and that appellant was exposed to employment-related noise, but it found the medical evidence of record insufficient to establish that appellant's hearing loss was causally related to his workplace noise exposure.

OWCP referred appellant to Dr. Randolph for an opinion as to the cause of appellant's hearing loss. In a March 1, 2016 report, Dr. Randolph reviewed the statement of accepted facts, noted appellant's history, reviewed the medical and audiological evidence, presented examination finding, and reported results from a March 1, 2016 audiogram. He observed that appellant's hearing loss was compatible with noise exposure and was in excess of what should be predicted on the basis of presbycusis. Dr. Randolph also related that his workplace exposure was of sufficient intensity and duration to have aggravated his hearing loss, if ear protection was inadequately utilized. He noted that appellant's audiogram revealed hearing loss with

⁸ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁹ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

¹⁰ *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹¹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

¹² *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

¹³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁴ OWCP has accepted that the claim was timely filed. The Board has held that a program of annual audiometric examinations conducted by the employing establishment in conjunction with an employee testing program for hazardous noise exposure is sufficient to constructively establish actual knowledge of a hearing loss, such as to put the immediate supervisor on notice of an on-the-job injury. See *W.P.*, Docket No. 15-0597 (issued January 27, 2016).

audiometric configuration entirely compatible with hearing loss due to noise exposure. However, Dr. Randolph also explained that appellant left federal service on August 1, 1993, the audiogram performed on June 7, 1993 was normal, and that the hearing loss significantly deteriorated following appellant's retirement. Dr. Randolph, in his report, checked a box marked "Due" to the question of whether the hearing loss was work related, but circled the "Not Due" box in the outline portion of his report. In a May 3, 2016 supplemental report, Dr. Randolph opined that appellant's hearing loss was not work related. He further explained that his checking of a box to indicate causal relationship was a typographical error. Dr. Randolph, however, failed to explain with any medical rationale the basis for his causation opinion.

The Board therefore finds that Dr. Randolph's opinion regarding causal relationship is unclear and internally inconsistent. Dr. Randolph concludes that appellant's hearing loss was not caused by his employment, but found sensorineural hearing loss in excess of what would be predicted on the basis of presbycusis. Furthermore, he explained that the workplace noise exposure was sufficient to have aggravated his hearing loss.

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.¹⁵ 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.¹⁶

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done. As OWCP undertook development of the evidence by referring appellant to Dr. Randolph, it has the duty to secure an appropriate report addressing the relevant issues.¹⁷

Although that Dr. Randolph clarified his report by addressing a typographical error, his reports remain of limited probative value because he submitted no consistent medical rationale. This case will be remanded to OWCP for referral to another second opinion physician to evaluate the claim regarding the issue of causal relationship.¹⁸ Following this and any necessary further development, OWCP shall issue a *de novo* decision as to whether appellant has established a hearing loss causally related to factors of his federal employment.

Accordingly, the Board finds that this case is not in posture for decision.

¹⁵ See *J.R.*, 59 ECAB 710, 713 (2008).

¹⁶ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹⁷ See *R.O.*, Docket No. 15-0194 (issued September 19, 2016).

¹⁸ See *M.O.*, Docket No. 16-1414 (issued November 23, 2016).

CONCLUSION

The Board finds that this case must be remanded for a second opinion evaluation to determine whether appellant sustained a bilateral hearing loss causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 9, 2016 is set aside and this case is remanded for further proceedings consistent with this opinion.

Issued: March 2, 2017
Washington, DC

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

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

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