



## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the prior appeal are incorporated herein by reference. The relevant facts are as follows.

On May 5, 2015 appellant, then a 55-year-old desk equipment foreman, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss as a result of working around different types of noisy equipment and tools at the employing establishment since 1978. He stated that he first became aware of his condition and realized that it resulted from factors of his federal employment on April 30, 2015. Appellant included a detailed list and description of the positions he had held and the noise he was exposed to during his federal employment from 1978 to the present. He indicated that he did not have any preexisting hearing problems before he started work. Appellant reported that he still worked as the desk equipment foreman and wore double hearing protection when he was in the noisy areas. He believed that his hearing loss was due to his federal employment because he had never worked anywhere except the employing establishment.

Appellant provided audiogram records from the employing establishment dated from August 7, 1978 to December 15, 2014. The records indicated that on August 7, 1978 his hearing thresholds at 500, 1,000, 2,000, and 3,000 hertz (Hz) were 80, 70, 70, and 75 decibels for the right ear and 10, 10, 5, and 10 decibels for the left ear.

An April 30, 2015 audiogram by M. McCaskill, an audiologist, related that appellant's hearing thresholds at 500, 1,000, 2,000, and 3,000 Hz were 110, 120, 115, and 115 decibels for the right ear and 25, 25, 20, and 25 decibels for the left ear.

OWCP referred appellant's claim, along with the medical record and the statement of accepted facts (SOAF), to Dr. Bryan M. Clay, a Board-certified otolaryngologist, for a second opinion examination to determine whether appellant sustained employment-related hearing loss. Dr. Clay completed an outline for otologic evaluation (Form CA-1332) dated September 2, 2015 and provided audiometric test results. In the CA-1332 form, he noted that appellant had significant right ear hearing loss at the beginning of his employment in 1978. Dr. Clay reported that appellant worked in a noisy environment, but he opined that there had not been much hearing loss in appellant's right or left ear in the sense that his right ear had severe hearing loss in 1978, such that he never had useful hearing on the right. He also noted that appellant's left ear hearing loss was not any worse through the baseline. On examination Dr. Clay observed clear and intact ear canals and drum mobility. He diagnosed right ear profound sensorineural hearing loss and normal left ear hearing. Dr. Clay reported that appellant had longstanding right ear hearing loss and checked a box indicating that appellant's hearing loss was not due to his civilian employment.

An audiogram performed on September 2, 2015 related hearing thresholds at 500, 1,000, 2,000, and 3,000 Hz were not ratable for the right ear, and were 10, 10, 15, and 20 decibels for the left ear.

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<sup>2</sup> Docket No. 16-0714 (issued October 3, 2016).

By decision dated September 9, 2015, OWCP denied appellant's claim finding that the medical evidence of record failed to establish that his hearing loss was caused or aggravated by factors of his federal employment.

On September 25, 2015 OWCP received appellant's request for reconsideration. Appellant stated that he had not worked anywhere else in his career except at the employing establishment. He explained that he did not have any problems with his ears or hearing problems before he started working for the employing establishment in 1978. Appellant reported that his workstation was extremely noisy and that he worked in this area for 20 years. He believed that his employment affected his hearing.

By decision dated October 9, 2015, OWCP denied appellant's request for reconsideration of the merits of his case. It determined that no new evidence was submitted with his reconsideration request.

On February 29, 2016 appellant appealed to the Board.

By decision dated October 3, 2016, the Board found that the case was not in posture for decision as Dr. Clay's report did not adequately address the issue of causal relationship. The Board noted that he had not provided a full explanation of why appellant's occupational noise exposure had no apparent effect on his hearing, and that, as appellant had been referred to a second opinion physician, OWCP had the responsibility to obtain a report resolving the issue of causal relationship. On remand, the Board ordered referral of appellant, along with an updated SOAF and medical record, to Dr. Clay (if available and willing) or another second opinion physician for an opinion on causal relationship, to be followed by a *de novo* decision.<sup>3</sup>

On November 10, 2016 OWCP referred appellant, along with a SOAF, for a second opinion examination with Dr. Clay to resolve the issue of whether appellant's hearing loss was causally related to his federal employment and to determine the extent of any hearing loss, if any.

In a report dated December 1, 2016, Dr. Clay noted that appellant had significant right-sided hearing loss in a 1978 hearing test, with normal hearing in the left ear. He noted that appellant's left-sided hearing loss was only slightly worse in high pitches than the baseline, but not in excess of normal presbycusis. Appellant's right-sided hearing loss was profound, which was similar to prior testing, and unrelated to presbycusis. Dr. Clay opined that appellant's right-sided hearing loss was not related in any way to his federal employment, as it was preexisting, while appellant's left ear's hearing was basically normal. He further noted that appellant's hearing loss did not fit an explanation of noise exposure.

By decision dated December 13, 2016, OWCP denied appellant's claim for bilateral hearing loss. Relying on Dr. Clay's December 1, 2016 report, it found that appellant had not established that his hearing loss was related to factors of his federal employment.

On February 23, 2017 appellant requested reconsideration of OWCP's December 13, 2016 decision.

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<sup>3</sup> *Id.*

By letter dated January 17, 2017, Debbie Fortenberry, a hearing instrument specialist, performed a screening test on appellant. She noted that the hearing test performed on that date was inconsistent in that the speech reception threshold in the left ear was 70, while the pure-tone average in the left ear was 91.

By letter dated February 23, 2017, appellant stated that his physician had rendered an opinion confirming that his hearing loss was due to noise exposure. He submitted an unsigned audiogram dated January 12, 2017.

On a form dated February 1, 2017, Dr. James House III, a Board-certified otolaryngologist, diagnosed appellant with right-sided deafness.

By decision dated April 21, 2017, OWCP reviewed the merits of appellant's claim and denied modification. It found that none of the evidence submitted on reconsideration contained an opinion from a qualified physician on the issue of causal relationship.

On May 10, 2017 appellant again requested reconsideration and submitted additional evidence.

In a report dated January 30, 2017, Dr. Alfred Windham, a Board-certified otolaryngologist, examined appellant and diagnosed bilateral sensorineural hearing loss. He noted that appellant may have autoimmune inner ear disease and that Dr. House was treating appellant for that condition.

Appellant submitted unsigned audiograms dated January 12, 2017 and April 30, 2015. He also submitted the results of a rapid plasma regain test dated January 12, 2017.

In an undated statement, a superintendent at the employing establishment confirmed that appellant had been employed there since 1978, and that he had been exposed to noisy work areas throughout his employment.

By decision dated August 8, 2017, OWCP reviewed the merits of appellant's claim and denied modification. It found that none of the evidence submitted on reconsideration contained a well-rationalized explanation of how duties of his federal employment were connected to his hearing loss.

#### **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 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 proof to establish by the weight of the reliable, probative, and substantial evidence that his hearing loss 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>

Causal relationship is a medical issue and the 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

Appellant alleges that he sustained bilateral hearing loss as a result of his exposure to noisy equipment and tools during his federal employment. OWCP accepted that he was exposed

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<sup>4</sup> *Gary J. Watling*, 52 ECAB 278-79 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

<sup>6</sup> T.C., Docket 17-0872 (issued October 5, 2017).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994); *John W. Butler*, 39 ECAB 852 (1988); *D.S.*, Docket No. 16-0903 (issued September 8, 2016).

<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).

to hazardous noise at the employing establishment, but denied his claim finding that the medical evidence failed to establish that his bilateral hearing loss was caused or aggravated by his employment. The Board finds that appellant has not submitted sufficient evidence to establish that his hearing loss was caused or aggravated by factors his federal employment.

Pursuant to the Board's October 3, 2016 remand of the case for further development of the medical evidence, OWCP referred appellant for a second opinion examination to obtain a rationalized opinion on causal relationship. On December 1, 2016 Dr. Clay noted that appellant had significant right-sided hearing loss in a 1978 hearing test, with normal hearing in the left ear. He noted that appellant's left-sided hearing loss was only slightly worse in high pitches than the baseline, but not in excess of normal presbycusis. Appellant's right-sided hearing loss was profound, which was similar to prior testing. Dr. Clay noted that he did not believe appellant's right-sided hearing loss was related in any way to his federal employment, as he had significant preexisting loss. He further explained that appellant's right-sided hearing loss did not fit an explanation of noise exposure. OWCP issued a *de novo* decision dated December 13, 2016, denying appellant's claim for employment-related hearing loss. Relying on Dr. Clay's December 1, 2016 report, it found that appellant had not established that his hearing loss was related to factors of his federal employment. The Board finds that Dr. Clay'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. Clay referenced current and previous audiometric test results and explained why appellant's hearing loss was not employment related.<sup>11</sup> His report therefore provided rationalized medical opinion and was of probative medical value.

On a form dated February 1, 2017, Dr. House diagnosed appellant with right-sided deafness. However, he offered no opinion regarding the cause of appellant's hearing loss. The Board has held that 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>12</sup> As such, this report is insufficient to meet appellant's burden of proof.

In a report dated January 30, 2017, Dr. Windham noted that he had examined appellant and diagnosed bilateral sensorineural hearing loss. He noted that appellant may have autoimmune inner ear disease and that Dr. House was treating appellant for that condition. Dr. Windham offered no opinion as to whether appellant's bilateral sensorineural hearing loss or his possible autoimmune inner ear disease were causally related to factors of appellant's federal employment. As previously noted, to be of probative value in establishing causal relationship 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. Lacking these elements, Dr. Windham's report is of limited probative value.<sup>13</sup>

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<sup>11</sup> See *T.T.*, Docket No. 17-0471 (issued August 8, 2017).

<sup>12</sup> See *C.B.*, Docket No. 09-2027 (issued May 12, 2010); see also *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>13</sup> *Supra* note 8.

On reconsideration, appellant also submitted diagnostic tests consisting of audiograms and hearing tests from Ms. Fortenberry and unnamed individuals. The Board has held that reports of diagnostic tests are of limited probative value as they fail to provide an opinion on the causal relationship between his employment duties and the diagnosed conditions. For this reason, this evidence is not sufficient to meet appellant's burden of proof.<sup>14</sup>

It is appellant's burden of proof to establish causal relationship between his hearing loss and factors of his federal employment.<sup>15</sup> As he has not submitted any rationalized medical evidence to support his allegation that his claimed conditions were caused by duties of his federal employment, he has not met his burden of proof to establish his claim.<sup>16</sup>

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 bilateral hearing loss causally related to factors of his federal employment.

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<sup>14</sup> *S.G.*, Docket No. 17-1054 (issued September 14, 2017).

<sup>15</sup> *Supra* note 5.

<sup>16</sup> *Supra* note 4.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 8 and April 21, 2017 are affirmed.

Issued: February 14, 2018  
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