

FACTUAL HISTORY

On December 14, 2016 appellant, then an 80-year-old retired pipefitter,² filed an occupational disease claim (Form CA-2) alleging that his binaural hearing loss was caused by factors of his federal employment. He indicated that he had gradual and progressive hearing loss due to noise exposure confirmed by an audiologist. Appellant indicated that he first became aware of his claimed condition and its relationship to factors of his federal employment on February 28, 1991. He explained that his delay in filing his claim was because he was not told that he could file a claim. The employing establishment indicated that a letter of controversion would follow.

By development letter dated December 15, 2016, OWCP requested additional information from appellant. It advised appellant to submit additional evidence regarding the timely notification of his claim, evidence to establish that he actually experienced the employment factors alleged to have caused his injury, and evidence to support that he was injured while performing duties of his federal employment. Appellant was also asked to complete a questionnaire listing his employment history, exposure to hazardous noise at work, the date he first noticed his hearing loss, all previous ear or hearing programs in which he participated, and hobbies involving exposure to loud noise. Additionally, he was asked to explain his failure to file the claim in a timely manner. Appellant was afforded 30 days to submit the requested information.

In a separate letter to the employing establishment, dated December 15, 2016, OWCP requested information, including that the locations of appellant's job sites where the alleged exposure occurred, sources of exposure to noise and machinery, the decibel and frequency level (to include a noise survey report for each job site and the period of exposure, and the types of ear protection and noise attenuation in decibels if known. It also requested employment data and the date of last exposure to hazardous noise and the pay rate in effect on that date.

In a letter dated November 29, 2016, T.K., a patient care coordinator, provided a copy of appellant's Form CA-2 and noted that he was filing a claim for hearing loss that occurred while working for the employing establishment from August 27, 1964 until his retirement on February 28, 1991.

In a December 15, 2016 letter, J.S., an employing establishment human resources specialist, controverted the claim. She noted that the claim was filed more than three years after the last known date of exposure, which was from 1964 to 1991. J.S. argued that it was unknown if the injury occurred due to working at the employing establishment or what the exposure levels outside the employing establishment were for the last 25 years. She also argued that there was no medical evidence to establish that appellant sustained hearing loss due to factors of his federal employment. J.S. noted that there was no major shift in hearing from 1964 to his last audiogram in 1991.

OWCP received notification of personnel action forms (SF-50s) dated February 22, 1991 and April 27, 1964, a pipefitter description, appellant's work history and application for

² The record reflects that appellant retired on February 28, 1991.

employment, and an occupational hearing loss claim checklist dated November 7, 2016. It also received employing establishment audiograms and audiometric results dated April 25, 1979, August 24, 1981, March 3, 1983, February 2, 1984, February 7 and 26, 1985, February 7, 1987, February 3, 1988, February 1, 1991, and November 7, 2016.

On January 25, 2017 OWCP referred appellant, together with the medical record and a statement of accepted facts (SOAF),³ to Dr. Richard Seaman, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram.

In February 16, 2017 report, Dr. Seaman noted appellant's history. He indicated that appellant's chief complaints were hearing loss and very occasional tinnitus, which was not bothersome. Additionally, Dr. Seaman noted that appellant related that he first noticed hearing loss about 10 years prior and did not have any significant tinnitus and never wore hearing aids. Additionally, he noted that appellant believed that his hearing loss was related to his federal employment. Dr. Seaman determined that appellant was hearing impaired in all situations and reiterated that he had occasional tinnitus, which was not bothersome. He noted that, at the time of appellant's retirement in 1991, his hearing was well within normal range and that since that time, his hearing deteriorated remarkably. Dr. Seaman indicated that appellant was also part of the hearing conservation program. He examined appellant's ears and found that the ear canals and Tympanic membranes were normal. Dr. Seaman found that the 500 cycle fork was midline, air greater than bone bilaterally, throat, and neck were negative. He also found that the audiogram was done in a sound attenuated booth, with an audiometer calibrated on June 23, 2016. Dr. Seaman advised that the audiogram revealed a severe bilateral high frequency hearing loss extending well into speech ranges and that he had 72 percent discrimination on the right and 60 percent discrimination on the left. He determined that the speech reception thresholds and pure-tone averages agreed that the audiogram was valid and the Tympanogram was normal bilaterally.

Dr. Seaman diagnosed bilateral sensorineural hearing loss. He explained that appellant's hearing loss at the beginning and the end of his federal employment was within normal limits. With regard to comparing appellant's present audiometric findings with those at the beginning of exposure, Dr. Seaman advised that it was not applicable because appellant had moderate-to-severe sensorineural hearing loss that came on since his retirement. He explained that his workplace exposure could have easily contributed to his hearing loss but there was no evidence that this occurred. Dr. Seaman found that there were no other significant contributory factors other than presbycusis. He also determined that there was no evidence of Meniere's disease or acoustic neuroma. Dr. Seaman recommended hearing aids for both ears, based upon presbycusis and not on an industrial noise damage. He opined that his conclusion was based upon appellant's audiometric findings which were well within normal limits. Dr. Seaman referenced the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*).⁴ He determined that appellant had binaural hearing loss of

³ In the SOAF, OWCP noted that appellant was exposed to noise in his federal employment from chippers, grinders, sanders, deck crawlers, needle guns, drills, and saws for eight hours per day, plus overtime, from April 27, 1964 to February 28, 1991. Additionally, it was noted that hearing protection was provided and used.

⁴ A.M.A., *Guides* (6th ed. 2009).

28.125 percent on the right and 31.875 percent on the left. Additionally, Dr. Seaman determined that the tinnitus rating was zero. He reiterated that appellant's hearing loss was not due to noise damage.

By decision dated March 1, 2017, OWCP denied appellant's claim on the fifth basic element, causal relationship, hiding that he had not established that he sustained hearing loss causally related to the accepted factors of his federal employment. It explained that the reason for the finding was that Dr. Seaman opined that appellant's hearing loss was due to presbycusis (age) and not industrial noise exposure. OWCP noted that appellant's hearing was within normal limits at the time of his retirement on February 22, 1991 and there was no other evidence submitted establishing a link between his federal employment and the current 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained 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.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated 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.⁷

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Id.*

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish that he sustained hearing loss causally related to the accepted factors of his federal employment. Appellant did not provide any medical evidence providing a rationalized medical opinion supportive of his claim for employment-related occupational hearing loss.

OWCP referred appellant to a second opinion physician, Dr. Seaman, who concluded that appellant did not have any sensorineural hearing loss due to his federal employment. On February 16, 2017 Dr. Seaman examined appellant and reviewed the medical record, including the sequential audiograms conducted during appellant's federal employment. He explained that appellant's chief complaints were hearing loss and very occasional tinnitus, which was not bothersome. Dr. Seaman noted that appellant related that he first noticed hearing loss about 10 years ago, that he did not have any significant tinnitus, and he had never worn hearing aids. He reviewed the record and explained that, at the time of appellant's retirement in 1991, his hearing was well within normal range. Dr. Seaman explained that since that time, his hearing deteriorated remarkably. He also noted that appellant had participated in the hearing conservation program. Dr. Seaman diagnosed binaural sensorineural hearing loss and explained that appellant's hearing loss at the beginning and the end of his federal employment was within normal limits.

With regard to comparing appellant's present audiometric findings with those at the beginning of exposure, Dr. Seaman advised that it was not applicable because appellant had moderate to severe sensorineural hearing loss that came on since his retirement. He also explained that, while his workplace exposure could have easily contributed to his hearing loss, there was no evidence to support that this occurred. Additionally, there were no other significant contributory factors other than presbycusis. Dr. Seaman advised that there was no evidence of Meniere's disease or acoustic neuroma. He recommended hearing aids for both ears, based upon presbycusis and not on industrial noise damage. Dr. Seaman opined that his conclusion was based upon appellant's audiometric findings which were well within normal limits. He referenced the A.M.A., *Guides* and determined that appellant had monaural hearing loss of 28.125 percent on the left and 31.875 percent on the right, for a binaural loss of 28.75 percent. Dr. Seaman also found that appellant had a zero tinnitus rating. He reiterated that appellant's hearing loss was not due to noise damage.

Although appellant was exposed to noise while in the performance of his federal employment duties, the medical evidence of record is insufficient to establish that he had hearing loss causally related to the accepted factors of his federal employment. Thus, the evidence of record is insufficient to establish his claim.⁸

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 and 20 C.F.R. §§ 10.605 through 10.607.

⁸ See *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 11, 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