

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

M.N., Appellant)	
)	
and)	Docket No. 17-1729
)	Issued: June 22, 2018
DEPARTMENT OF THE ARMY, TANK)	
AUTOMOTIVE & ARMAMENTS COMMAND,)	
RED RIVER ARMY DEPOT, Texarkana, TX,)	
Employer)	
)	

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 7, 2017 appellant filed a timely appeal from a June 30, 2017 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 over the merits of the claim.

ISSUE

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

FACTUAL HISTORY

On February 14, 2017 appellant, then a 54-year-old mechanic, filed an occupational disease claim (Form CA-2) alleging that, on February 10, 2017, he first became aware of his

¹ 5 U.S.C. § 8101 *et seq.*

binaural sensorineural hearing loss and that his condition was caused or aggravated by his employment exposure to high noise levels from impact guns, rotor machines, sledge hammers, and motor vehicles. Appellant worked as a heavy mobile equipment repairer from January 7, 2008 to September 10, 2015.² The employing establishment controverted the claim.

Evidence received with the claim included January 4, 2013 audiometric test results, audiograms performed by the employing establishment's hearing conservation program dated October 21, 2008, March 30, 2011, and November 6, 2012 and an undated industrial hygiene report summarizing noise level testing performed at the employing establishment.

In a development letter dated February 15, 2017, OWCP notified appellant of the deficiencies in his claim. Appellant was afforded 30 days to submit additional factual and medical evidence, including a physician's well-rationalized opinion explaining how his specific job duties resulted in a hearing loss. Also by letter dated February 15, 2017, OWCP requested that the employing establishment provide additional information pertaining to appellant's work-related noise exposure, including the period and length of exposure and type(s) of ear protection provided.

In February 19 and March 20, 2017 statements, appellant provided a detailed description of the dates and various locations he worked for the employing establishment. He alleged that no hearing protection was provided. An audiogram report from February 10, 2017 was also submitted.

OWCP referred appellant, together with a statement of accepted facts (SOAF) and the medical record, to Dr. Mark D. Gibbons, a Board-certified otolaryngologist, for a second opinion examination and an audiological evaluation to determine the extent of any noise-induced hearing loss causally related to his federal employment.

Dr. Dran D. Flyger, an audiologist, performed an audiometric evaluation on June 14, 2017. Notes handwritten on the report indicated that appellant had a positive Stenger test on both right and left side at 500 hertz (Hz) frequency, the test was of poor reliability, the speech recognition threshold/pure tone average (SRT/PTA) were in poor agreement, and appellant had absent reflexes. Dr. Flyger also noted that appellant was redirected/reinstructed twice.

In a June 16, 2017 report, Dr. Gibbons reviewed the SOAF, conducted a physical examination, and reviewed the results of the June 14, 2017 audiogram. He diagnosed binaural sensorineural hearing loss, but opined that the sensorineural hearing loss seen was not due to appellant's federal employment. Dr. Gibbons indicated that appellant's hearing was normal during the employing establishment's hearing tests on October 21, 2008, approximately 10 months after he started his federal employment, and were also normal on March 30, 2011, approximately three years later. He noted that while appellant's current hearing loss exceeded what would normally be predicated on the basis of presbycusis, the June 14, 2017 audiogram was unreliable as appellant had a positive Stenger test, which indicated that he chose not to

² Under OWCP File No. xxxxxx026, appellant's prior hearing loss claim was denied.

respond to tones that he could hear.³ Dr. Gibbons opined that it was unlikely that appellant's workplace exposure was of sufficient intensity and duration to have caused the hearing loss. Thus, he concluded that appellant's hearing loss was not due to noise exposure during his federal employment. Dr. Gibbons recommended that appellant repeat the audiogram in one year and consider other acoustic testing for an assessment of his hearing.

By decision dated June 30, 2017, OWCP denied appellant's hearing loss claim. It found that appellant had established that hazardous noise exposure occurred at work and that he was diagnosed with binaural sensorineural hearing loss, however he had not established that his binaural sensorineural hearing loss was causally related to his federal employment noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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.⁵ 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.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) 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 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 is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable 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.⁷ Appellant has the burden of

³ The June 14, 2017 audiogram with testing at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz revealed decibel losses for the right ear as 85, 70, 90, and 100, respectively. Testing at the same frequency levels revealed decibel loss of 65, 60, 75, and 75 for the left ear. Dr. Gibbons indicated that the SRT and PTA scores did not agree with six decibels and that they did not agree using the best two frequency "Fletcher" method. He explained that the discrepancy appeared to be functional as his SRT/PTA scores were in poor agreement and the Stenger test was positive.

⁴ *Supra* note 1.

⁵ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams, id.*

establishing by weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁸

ANALYSIS

The Board finds that this case is not in posture for decision.⁹

OWCP has accepted that appellant was exposed to hazardous employment-related noise while working as a machinist at the employing establishment. In its June 30, 2017 decision, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish binaural hearing loss causally related to workplace noise exposure.

OWCP properly referred appellant to Dr. Gibbons, a Board-certified otolaryngologist, for a second opinion evaluation. In his June 16, 2017 report, Dr. Gibbons diagnosed binaural sensorineural hearing, however he opined that appellant's hearing loss was not due to appellant's noise exposure during his federal employment. Dr. Gibbons reasoned that appellant had normal hearing tests in 2008 when he started federal employment as a mechanic and normal hearing tests three years later in 2011. He also related that appellant's current hearing loss was in excess of what would be normally predicated on the basis of presbycusis. However, Dr. Gibbons did not provide any further explanation of this opinion. The Board has held that an opinion on a given medical question is of limited probative value if it is not based on a complete and accurate factual and medical history.¹⁰ While Dr. Gibbons found the current audiogram of June 14, 2017 was unreliable, he failed to discuss the findings of audiometric testing from November 6, 2012, January 14, 2013, and February 10, 2017 to determine whether appellant's hearing had worsened during the complete course of his employment and two years following his employment. Thus, his opinion that appellant's binaural hearing loss was not related to his federal employment was based on an incomplete medical history is of limited probative value.¹¹

Furthermore, it is not necessary to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship.¹² An employee is not required to prove that occupational factors are the sole cause of his claimed condition. If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.¹³

Once OWCP undertakes development of the record it must procure medical evidence that will resolve the relevant issues in the case.¹⁴ The Board will, therefore, remand the case to

⁸ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

⁹ *J.L.*, Docket No. 17-0782 (issued August 7, 2017); *H.C.*, Docket No. 16-0740 (issued June 22, 2016).

¹⁰ *E.R.*, Docket No. 15-1046 (issued November 12, 2015).

¹¹ *Id.*

¹² See *H.C.*, *supra* note 9.

¹³ See *Beth P. Chaput*, 37 ECAB 158, 161 (1985); *S.S.*, Docket No. 08-2386 (issued June 5, 2008).

¹⁴ See *K.G.*, Docket No. 17-0821 (issued May 9, 2018).

OWCP to seek clarification from Dr. Gibbons for further development of the medical evidence with regard to the three additional audiograms reference above and whether appellant's workplace noise exposure contributed in any degree to bilateral hearing loss condition since appellant did have sensorineural hearing loss which could not be explained by presbycusis.¹⁵

Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the June 30, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 22, 2018
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

¹⁵ When it refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, OWCP should secure an appropriate report on the relevant issues. *See Ayanle A. Hashi*, 56 ECAB 234 (2004) (when OWCP refers a claimant for a second opinion evaluation and the report does not adequately address the relevant issues, it should secure an appropriate report on the relevant issues); *Mae Z. Hackett*, 34 ECAB 1421 (1983) (where OWCP referred appellant to a second opinion physician, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case).