

ISSUE

The issue is whether appellant has met his burden of proof to establish left-sided hearing loss and tinnitus causally related to an accepted May 26, 2017 employment incident.

FACTUAL HISTORY

On June 8, 2017 appellant, then a 46-year-old criminal investigator and firearms instructor, filed a traumatic injury claim (Form CA-1) alleging that hazardous noise during employment-related firearms training on May 26, 2017 caused constant ringing in his left ear that had not abated after seven days. He submitted a June 9, 2017 report from a physician assistant, who noted appellant's complaint of ringing in his left ear during the previous two weeks following firearms practice.

In a June 26, 2017 development letter, OWCP notified appellant of the type of additional evidence needed to establish his claim, including corroboration of his participation in firearms training on May 26, 2017, a diagnosis from his attending physician, and medical rationale from that physician which supported a causal relationship between the claimed employment incident exposure and diagnosed condition. It explained that a physician assistant did not qualify as a physician under FECA. OWCP afforded appellant 30 days to submit the requested evidence.

On June 29, 2017 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) for appellant's complaint of "constant ringing in left ear following firearms training" on May 26, 2017.

Appellant submitted medical evidence. In a June 29, 2017 report, Dr. Mario Alinea, an attending Board-certified family practitioner, noted appellant's complaints of left-sided hearing loss and tinnitus after exposure to firearms noise on a shooting range. Appellant asserted that he had no exposure to hazardous noise outside of his occupational exposure to firearms. Dr. Alinea obtained an audiogram on June 29, 2017. At the frequency levels of 500, 1,000, 2,000, and 3,000 hertz in the right ear, appellant exhibited decibel losses of 10, 15, 10, and 29 respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 20, 30, 20, and 40 respectively. Tympanometry was within normal limits bilaterally. Dr. Alinea diagnosed left-sided sensorineural hearing loss with tinnitus. He explained that based on appellant's history and clinical findings, he was "unclear if this hearing loss [was] attributable to firearms noise exposure on a more probable than not basis." Dr. Alinea remarked that, as most occupational noise exposures were symmetric, hearing loss was typically bilateral. He referred appellant to an audiologist to rule out other causes of unilateral hearing loss such as acoustic neuroma.

In a June 29, 2017 form report (Form CA-16) Dr. Alinea diagnosed tinnitus and sensorineural hearing loss. He checked a box marked "yes" indicating his support for a causal relationship between the diagnosed conditions and exposure to firearms noise at work. Dr. Alinea also completed a duty status report (Form CA-17) on June 29, 2017, in which he checked a box marked "yes" in support of causal relationship.

Also provided was a July 17, 2017 report from an audiologist who noted appellant's complaints and her findings.

By decision dated July 27, 2017, OWCP accepted that his participation in the May 26, 2017 firearms practice occurred as alleged, but denied the claim as the medical evidence of record was insufficient to establish causal relationship between that incident and the diagnosed left-sided sensorineural hearing loss. It noted that Dr. Alinea did not provide medical rationale in support of causal relationship between the diagnosed sensorineural hearing loss condition and the accepted May 26, 2017 employment incident.

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 determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident that is alleged to have occurred.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

The medical evidence required to establish causal relationship is generally 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 a 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 medial 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.⁹

⁴ *Supra* note 2.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁹ *Solomon Polen*, 51 ECAB 341 (2000).

ANALYSIS

Appellant claimed that he sustained left-sided tinnitus and sensorineural hearing loss caused by May 26, 2017 exposure to hazardous noise during weapons training. OWCP accepted that this incident occurred at the time, place, and in the manner alleged, but denied the claim as the medical evidence was insufficient to establish causal relationship.

Appellant submitted medical evidence in support of his claim. In a June 29, 2017 narrative report, Dr. Alinea, an attending Board-certified family practitioner, opined that it was unclear if appellant's sensorineural hearing loss with tinnitus was due to firearms noise exposure as it was asymmetric while most occupational noise exposures produced bilateral hearing loss. Subsequently, he changed his opinion in two June 29, 2017 form reports in which he checked a box marked "yes" to indicate his support for causal relationship between the diagnosed conditions and exposure to firearms noise on May 26, 2017. Given his contradictory opinion in his earlier narrative report from his later form report, it is unclear whether Dr. Alinea believes that the injury was work related or otherwise. To the extent that he indicated in the affirmative in his form report, such a report that addresses causal relationship with a check mark, without medical rationale explaining how the employment incident caused or aggravated the alleged injury, is of diminished probative value and insufficient to establish causal relationship.¹⁰

Also submitted was a July 17, 2017 report from an audiologist. The Board notes that audiologists are not considered physicians under FECA.¹¹ Therefore, a report from an audiologist is of no probative value on the issue of causal relationship.¹² Thus, this report is insufficient to meet appellant's burden of proof. Likewise, appellant also submitted a June 9, 2017 report from a physician assistant. However, the Board has held that physician assistants are not considered physicians as defined under FECA.¹³ As such, this evidence is also insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.¹⁴ Appellant's honest belief that the May 26, 2017 employment incident caused left-sided tinnitus and hearing loss, however sincerely held, does not constitute medical evidence necessary to establish causal relationship.¹⁵ As he has failed to provide a rationalized medical opinion sufficient to establish causal relationship between the

¹⁰ *R.U.*, Docket No. 17-0168 (issued January 9, 2018).

¹¹ *Thomas O. Bouis*, 57 ECAB 602 (2006). See 5 U.S.C. § 8101(2).

¹² *Howard P. Lane*, 36 ECAB 107 (1984).

¹³ 5 U.S.C. § 8101(2); *Sean O'Connell*, 56 ECAB 195 (2004) (physician assistants). See also *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (a medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician).

¹⁴ *D.D.*, 57 ECAB 734 (2006).

¹⁵ *H.H.*, Docket No. 16-0897 (issued September 21, 2016).

claimed injury and the accepted May 26, 2017 employment incident, he has failed to meet his burden of proof.¹⁶

On appeal, appellant contends that the medical and factual evidence of record established a direct causal relationship between his duties as a firearms instructor and the claimed hearing loss. As found above, the medical evidence of record does not contain sufficient medical rationale supporting causal relationship to meet appellant's burden of proof.

Appellant may submit additional 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 left-sided hearing loss and tinnitus causally related to an accepted May 26, 2017 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 27, 2017 is affirmed.

Issued: March 9, 2018
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *Supra* note 8.