

FACTUAL HISTORY

On April 2, 2016 appellant, then a 56-year-old correspondence examination technician, filed an occupational disease claim (Form CA-2) alleging that she sustained hearing loss and other conditions due to exposure to hazardous noise in her workplace.³ She asserted that in September 2014 it was confirmed that sound masking noise in the workplace needed to be adjusted because it was causing medical issues. Appellant did not stop work. On the reserve side of the Form CA-2, appellant's immediate supervisor indicated that she began supervising appellant in February 2015 and advised that she had no knowledge of the assertions made by appellant in her portion of the form. The supervisor noted that the white noise had been turned off in appellant's current workplace and that she sat in an area with sound masking walls.

Appellant submitted a report of April 14, 2016 noise level testing of her work building which revealed that decibels levels (including noise contributed by the sound masking system) varied between 37.2 and 56.1 decibels depending on the time of day and the precise workstation where the testing was performed.⁴

Appellant submitted March 28, 2015 and April 4, 2016 reports in which Megan Ford, an attending audiologist, noted that she had mild high frequency hearing loss as denoted by audiogram testing performed on June 29, 2015 and January 6, 2016. The record contains copies of the audiograms obtained on those dates.⁵

In a May 15, 2015 report, Dr. Christen P. Fragala, an attending Board-certified family practitioner, indicated that appellant needed to wear hearing protection at work due to hearing loss and her reported trouble in focusing related to excessive noise from the sound-masking system.

In a May 18, 2016 development letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In statements dated May 18 and 30, 2016, appellant responded to OWCP's May 8, 2016 development letter and provided additional information about her exposure to noise in the workplace and the progression of her hearing symptoms. She advised that a sound-masking system was installed in her workplace a few years ago and she noted that she had been exposed to sound-masking noise from the system throughout much of her workday. Appellant asserted that the masking noise was loud enough to interfere with her understanding callers on the telephone. She indicated that her regular schedule was 3:30 p.m. to 2:00 a.m., Tuesday through

³ Appellant also alleged that she sustained ringing in her ears, headaches, difficulty concentrating, and sleep apnea due to exposure to hazardous noise in the workplace. She indicated that on November 29, 2014 she first became aware of her claimed condition and its relationship to factors of her federal employment.

⁴ The report indicated that the sound-masking system was turned down between 2:55 p.m. and 4:00 a.m. each workday.

⁵ Appellant submitted several documents, dated in late-2014, through which she requested reasonable accommodation in the form of being placed in a work area where white noise levels were much lower.

Friday, and that she worked 10 to 20 hours of overtime per week. Appellant asserted that she was not exposed to loud noise outside of work.

In a May 27, 2016 report, Dr. Fragala indicated that she was appellant's primary care physician and that she evaluated her on several occasions between May 2015 and May 2016. She noted that, due to the sound masking system at her work, appellant had bilateral high frequency hearing loss. Dr. Fragala advised that appellant needed hearing aids to help her hear. She noted, "I do feel that her hearing loss is related to the sound masking system in operation at her work. She does not have a history of hearing loss prior to her exposure to the sound masking system at her work."⁶

OWCP referred appellant for a second opinion examination to Dr. David Vernick, a Board-certified otolaryngologist. It requested that Dr. Vernick provide an opinion regarding whether appellant sustained a medical condition, including hearing loss, due to exposure to noise in the workplace. OWCP provided Dr. Vernick with a copy of the case record and a statement of accepted facts (SOAF) dated June 13, 2016.

In an August 4, 2016 report, Dr. Vernick discussed appellant's factual and medical history and detailed the findings of audiologic testing he obtained on that date.⁷ He noted that the audiograms from June 29, 2015 and January 6, 2016 showed bilateral high frequency hearing loss. Dr. Vernick advised that his physical examination revealed that appellant had normal ear canals and normal drum mobility. He diagnosed bilateral high frequency hearing loss and bilateral tinnitus, noting that these conditions were not related to noise exposure at work. Dr. Vernick posited that the workplace background noise, including masking noise, was not sufficient in intensity and duration to cause a hearing condition.⁸ He noted that appellant's hearing condition was consistent with age-related presbycusis.

OWCP requested that Dr. Vernick provide a supplemental report regarding the cause of appellant's tinnitus and regarding whether the masking noise machine caused any medical condition. In a supplemental August 31, 2016 report, Dr. Vernick indicated that appellant's tinnitus was related to her nonwork-related hearing loss and was not secondary to her federal employment. He noted that the noise-masking machine interfered with appellant's concentration, but did not cause any medical harm.

By decision dated October 5, 2016, OWCP found that appellant failed to establish a causal relationship between her workplace noise exposure and a diagnosed hearing loss or other condition. It determined that the weight of the medical evidence rested with the opinion of Dr. Vernick, OWCP's referral physician, who found that there was no such causal relationship.

⁶ In a May 27, 2016 attending physician report (Form CA-20), Dr. Fragala listed the history of injury as high frequency hearing loss due to noise masking system at work and diagnosed bilateral sensorineural hearing loss. She checked a box marked "Yes" indicating that the diagnosed condition was caused or aggravated by the described employment activity.

⁷ The record contains a copy of the audiogram Dr. Vernick obtained from an audiologist and adopted as accurate on August 4, 2016.

⁸ Dr. Vernick indicated that appellant reported that the masking noise interfered with her concentration.

Appellant requested a telephone hearing with a representative of OWCP's Branch of Hearings and Review.⁹

Prior to the hearing, appellant submitted an October 17, 2016 letter from Dr. Arthur Lauretano, an attending Board-certified otolaryngologist. Dr. Lauretano indicated that he was seeing appellant for a hearing loss and noted, "[Appellant] reports that she is exposed to white noise at work and that is the reason for her hearing loss and tinnitus."

Appellant also submitted copies of medical articles from "Noise and Health" journal and other publications regarding vibroacoustic disease (exposure to low frequency noise) and printouts from internet medical sites regarding noise exposure and hearing loss.

At the hearing held on March 1, 2017, appellant testified that the Occupational Safety and Health Administration (OSHA) advised her that the white noise level in her workplace was below the harmful decibel level. She noted that she contacted the manufacture of the sound masking equipment and was advised that the machine was in need of adjustment. Appellant advised that the sound masking machine was turned down, but not off. She indicated that she requested reasonable accommodation and was temporarily moved to another work location, but noted that she was then returned to the same work site.

After the hearing, appellant submitted copies of several e-mails she exchanged with employing establishment officials. The e-mails primarily concerned the operation of the sound masking system in appellant's workplace. In a May 8, 2015 e-mail, D.M., a safety officer for the employing establishment, advised appellant that OSHA required action for noise at 85 decibels or above. She noted that the testing of appellant's work area on May 7, 2015 showed a noise level of 48 to 49 decibels. D.M. included in her e-mail the results of sound masking noise measurements which showed tested levels of 35 decibels at appellant's workstation and 49 decibels outside the workstation.

In a January 27, 2017 letter, Dr. Lauretano indicated that he had evaluated appellant for hearing loss and tinnitus. He noted that she reported that was exposed to a loud white noise generator at work. Dr. Lauretano advised that this masking sound "might contribute" to appellant's hearing loss and tinnitus, and indicated, "I believe it is a contributing factor."

In a February 2, 2017 report, Jessica Woods, an attending audiologist, noted that appellant was under her treatment for severe tinnitus.

In an April 4, 2017 decision, OWCP's hearing representative affirmed OWCP's October 5, 2016 decision. He found that the weight of the medical evidence regarding the cause of appellant's hearing problems continued to rest with the opinion of Dr. Vernick. The hearing

⁹ In a December 1, 2016 letter, appellant requested that subpoenas be issued for testimony by an individual whom she felt had information about the potential harm of sound masking noise, and also for employing establishment records regarding her request for reasonable accommodation. In an informational letter dated January 18, 2017, OWCP's hearing representative advised appellant that the subpoena request could not be appellant and advised appellant that she could submit a written statement from the individual she wished to subpoena, and could obtain employing establishment documents through the Privacy Act of 1974 or the Freedom of Information Act (FOIA). The Board notes that this matter is not currently before it on appeal.

representative found that the reports of appellant's attending physicians were not well rationalized.

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 timely filed within the applicable time limitation period of FECA, that the 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.¹⁰ To establish fact of injury, an employee must submit evidence sufficient to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.¹¹ An employee must also establish that such event, incident, or exposure caused an injury.¹² 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.¹³

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.¹⁴ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 diagnosed condition is causally related to the employment factors identified by the employee.¹⁵

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹⁶ 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 established employment factors.¹⁷

¹⁰ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

¹² *Id.*

¹³ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁴ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹⁵ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁶ *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹⁷ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

ANALYSIS

Appellant alleged that she sustained hearing loss and other conditions due to exposure to hazardous noise in her workplace from a noise-masking machine.¹⁸ By decisions dated October 5, 2016 and April 4, 2017, OWCP denied appellant's claim for such work-related conditions.

On appeal appellant argues that OWCP improperly relied on the opinion of Dr. Vernick, OWCP's referral physician, in denying her claim and she asserts that it should have given greater weight to the opinions of her attending physicians.

The Boards finds that the weight of the medical evidence regarding the cause of appellant's hearing problems rested with the opinion of Dr. Vernick, OWCP's referral physician.

In an August 4, 2016 report, Dr. Vernick discussed appellant's factual and medical history and detailed the findings of audiologic testing he obtained on that date. He diagnosed bilateral high frequency hearing loss and bilateral tinnitus, noting that these conditions were not related to noise exposure at work. Dr. Vernick posited that the workplace background noise, including masking noise, was insufficient in intensity and duration to cause a hearing condition. He opined that appellant's hearing condition was consistent with age-related presbycusis. In a supplemental August 31, 2016 report, Dr. Vernick indicated that appellant's tinnitus was related to her nonwork-related hearing loss and was not secondary to her federal employment. He noted that the noise-masking machine interfered with appellant's concentration, but did not cause any medical harm.

The Board has reviewed the opinion of Dr. Vernick and finds that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Vernick was provided an accurate SOAF and he provided a thorough factual and medical history, and accurately summarized the relevant medical evidence.¹⁹ He provided medical rationale for his opinion by noting that appellant's hearing problems could be explained by a nonwork-related cause, *i.e.*, presbycusis (age-related hearing loss). Dr. Vernick took into account the low-level noise to which appellant was exposed in addition to her age and the audiogram testing results in the record.

Appellant submitted several reports in which attending physicians indicated that she sustained hearing loss due to exposure to noise in the workplace, but these reports are of limited probative value given the fact that these physicians did not provide adequate medical rationale in support of their opinions on causal relationship. The Board has held that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.²⁰

¹⁸ Appellant also claimed that she sustained ringing in her ears, headaches, difficulty concentrating, and sleep apnea due to exposure to hazardous noise in the workplace.

¹⁹ See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

²⁰ *C.M.*, Docket No. 14-88 (issued April 18, 2014).

In a May 27, 2016 report, Dr. Fragala, an attending Board-certified family practitioner, noted that, due to the sound masking system at her work, appellant had bilateral high frequency hearing loss. She advised that appellant needed hearing aids to help her hear. Dr. Fragala noted, “I do feel that her hearing loss is related to the sound masking system in operation at her work. Appellant does not have a history of hearing loss prior to her exposure to the sound masking system at her work.”

The Board notes that report is of limited probative value in establishing a work-related hearing loss because Dr. Fragala did not provide adequate medical rationale in support of her opinion on causal relationship.²¹ Although she noted a temporal relationship between appellant’s hearing complaints and exposure to the sound-masking system at work, the Board has held that the fact that a condition manifests itself or worsens during a period of employment²² or that work activities produce symptoms revelatory of an underlying condition²³ does not raise an inference of causal relationship between a claimed condition and employment factors. The Board notes that Dr. Fragala’s opinion is of limited probative value on the relevant issue of this case for the further reason that she does not specialize in a field peculiar to appellant’s claimed condition. The Board has held that the opinions of physicians who have training and knowledge in a specialized medical field have greater probative value concerning medical questions peculiar to that field than the opinions of other physicians.²⁴

In an October 17, 2016 letter, Dr. Lauretano, an attending Board-certified otolaryngologist, indicated that he was seeing appellant for a hearing loss and noted, “[Appellant] reports that she is exposed to white noise at work and that is the reason for her hearing loss and tinnitus.” In a January 27, 2017 letter, he indicated that he had evaluated appellant for hearing loss and tinnitus. Dr. Lauretano noted that she reported exposure to a loud white noise generator at work. He advised that this masking sound might contribute to appellant’s hearing loss and tinnitus, and indicated, “I believe it is a contributing factor.”

These reports do not establish appellant’s claim for a work-related hearing loss because Dr. Lauretano did not provide adequate medical rationale in support of his opinion on causal relationship. The Board notes that Dr. Lauretano’s reports contain mere conclusory opinions without the necessary rationale explaining how and why the employment factors were sufficient to result in the diagnosed medical condition. The Board has held that such opinions are insufficient to meet a claimant’s burden of proof to establish a claim.²⁵ Moreover, Dr. Lauretano introduced an

²¹ See *supra* note 20.

²² *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

²³ *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

²⁴ *Lee R. Newberry*, 34 ECAB 1294, 1299 (1983). In a May 27, 2016 attending physician report, Dr. Fragala listed the history of injury as high frequency hearing loss due to noise masking system at work and diagnosed bilateral sensorineural hearing loss. She checked a box marked “Yes” indicating that the diagnosed condition was caused or aggravated by the described employment activity. However, this report is of little probative value regarding causal relationship because the Board has held that when a physician’s opinion on causal relationship consists only of checking “Yes” to a form question, without more by the way of medical rationale, that opinion has little probative value and is insufficient to establish causal relationship. *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

²⁵ *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

equivocal aspect to his opinion on causal relationship when he indicated that the masking sound from the white noise generator in appellant's workplace might contribute to her hearing loss and tinnitus. The Board has held that an opinion which is equivocal or speculative is of limited probative value regarding the issue of causal relationship.²⁶

For these reasons, appellant has not met her burden of proof to establish hearing loss and other conditions due to factors of her federal employment.

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 established hearing loss and other conditions due to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the April 4, 2017 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2018
Washington, DC

Christopher J. Godfrey, 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

²⁶ See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962); *James P. Reed*, 9 ECAB 193, 195 (1956). The Board notes that appellant also did not submit medical evidence sufficient to establish her claim that she sustained headaches, difficulty concentrating, and sleep apnea due to exposure to hazardous noise in the workplace.