

on February 15, 2018. Appellant explained that during an annual physical an employing establishment nurse informed him that the results of his hearing test showed a loss of hearing.

In a separate undated statement, appellant noted that he had been a steamfitter with the employing establishment since June 18, 2011. He indicated that he worked around boilers, feed pumps, motors, turbines, moving belts and rollers, impact drills, welding machines, and air compressors, and that he worked in forced draft fan rooms, which required double hearing protection. Appellant's current steamfitter duties also included the tasks of grinding, hammering, gouging, and welding. He also indicated that he had worked in the private sector as a welder from 1980 to 1994 and September 1997 to October 2011. Appellant described essentially the same type of exposure in the private sector, and noted that he was exposed to noise six to eight hours on a daily basis. He also reported that he used hearing protection around noise.

By development letter dated March 20, 2018, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. By separate letter of even date, OWCP requested that the employing establishment submit evidence in its possession relative to appellant's alleged noise exposure. It afforded both parties 30 days to submit the necessary evidence.

In a March 28, 2018 statement, appellant reiterated the information contained in his earlier statement and information included in his Form CA-2. He also indicated that he was still exposed to hazardous noise at work and that he occasionally hunts and fishes.

OWCP received employing establishment noise exposure reports and audiograms dated July 25, 2011 to April 27, 2018. Appellant's March 15, 2018 responses to a questionnaire indicated that he attended loud concerts, rode motorcycles, used power tools, operated his own watercraft, hunted using firearms, and that his past jobs involved noise exposure.

An audiologist, Dr. Whitney R. Mauldin, submitted a report dated April 30, 2018 at the request of the employing establishment. She indicated that appellant's baseline examination of July 25, 2011 should be used for all comparisons, and noted that the baseline examination showed significant preexisting hearing loss in both ears, right worse than left. Dr. Mauldin's review of the plant records revealed "NO work-related incident resulting in acoustical trauma that would have affected his hearing anytime during his federal employment." She noted that use of the mandatory earplugs would have reduced even the highest level of noise exposure in the employing establishment's reports to a "non-injurious range." Dr. Mauldin cited research from the American College of Occupational & Environmental Medicine which stated that hearing loss due to occupational noise is "symmetrical, bilateral, does not produce a hearing loss greater than 75 [decibels] in the high frequencies, the rate of hearing loss due to chronic noise exposure is greatest during the first 10 [to] 15 years of exposure and decreases as the hearing threshold increases." She noted the research also states that hearing loss from occupational noise exposure occurs at the time of exposure, without a delayed effect or latency period. On this basis, Dr. Mauldin concluded that appellant's hearing thresholds during his federal employment had not exceeded that which would be expected for his age. Based on the foregoing, she concluded, "[i]t is more than likely that [appellant's] exposure to nonoccupational noises such as guns and watercraft are the contributing factors to his hearing loss ... any hearing loss he is currently experiencing is not work related[.]"

OWCP referred appellant, a statement of accepted facts (SOAF), and an otologic evaluation questionnaire for a second opinion evaluation with Dr. Melanie H. Smith, a Board-certified otolaryngologist, on September 6, 2018. The SOAF indicated that during appellant's federal employment from July 15, 2011 to April 30, 2018, appellant was exposed to noise emanating from boilers, feed pumps, motors, turbines, moving belts and rollers, grinders, impact drills, hammers, welding machines, air compressors, and FD Fan Rooms (for which double protection was required) for approximately six to eight hours per day. It further noted that appellant wore earplugs during this period. Objective sounds measurements indicated possible noise levels at 31.3 – 87.6 SE65 for 2012-13. The SOAF related that appellant had been exposed to similar noise for which appellant wore earplugs in his prefederal employment positions, and that appellant's extra-employment activities included hunting, fishing, loud concerts, motorcycling, boating, and use of power tools and firearms.

In a report dated September 28, 2018, Dr. Smith reviewed the SOAF and completed the questionnaire. Her report included an audiogram taken the same day, in which it noted measurements at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz). The right ear losses were recorded as 35, 25, 50, and 75 decibels (dBs); the left ear losses were recorded as 45, 25, 30, and 75 dBs. Dr. Smith calculated the monaural impairment in appellant's right and left ears to be 32 percent and 29 percent, respectively, and when adding 3 percent impairment for tinnitus, she found the binaural hearing impairment to be 33 percent. She found that appellant had reached his maximum improvement date, and recommended hearing aids. In response to the evaluation questionnaire, Dr. Smith explained that the audiogram of July 25, 2011 showed noise-induced hearing loss, right worse than left. In response to the question of whether appellant showed a sensorineural loss in excess of what would be normally predicated on the basis of age, Dr. Smith wrote "no." She also responded "no" to the question of whether the federal workplace exposure was of sufficient intensity and duration to have caused the hearing loss, writing "[appellant] had significant noise exposure and hearing loss prior to starting his [federal] employment." Dr. Smith further noted that appellant's hobbies also include some noise exposure. In response to the question of whether she believed the sensorineural hearing loss to be due in part or in whole to appellant's federal employment, she checked the box indicating she did not. Dr. Smith marked the same box indicating her opinion that appellant's tinnitus was not due to his federal employment.

By decision dated October 12, 2018, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his hearing loss was causally related to the accepted factors of his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

time limitation of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (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 identified employment factors.⁶

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁷ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁸ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish hearing loss due to accepted factors of his federal employment.

In order to determine the causal relationship, if any, between appellant's claimed hearing loss and the accepted factors of his federal employment, OWCP referred appellant, the case record, SOAF, and questions to Dr. Smith for a second opinion examination. Dr. Smith opined that appellant's hearing loss was not due in any part of appellant's federal employment. Based on earlier audiograms, she noted that appellant "had significant noise exposure and hearing loss prior to starting his [federal] employment." When his July 25, 2011 audiogram was compared to the audiogram administered on the date of her examination, September 28, 2018, Dr. Smith found that appellant's current hearing loss was not in excess of what would normally be expected as a result

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*

of the aging process, or presbycusis. Hence, he concluded that appellant's hearing loss since the start of his federal employment was not attributable to his employment exposure to noise, but due to presbycusis.¹⁰ Dr. Smith's opinion -- the only opinion on causal relationship in the record offered by a qualified physician -- was that appellant's hearing loss was not whatsoever attributable to his federal employment.¹¹

Though audiologist Dr. Mauldin, at the request of the employing establishment, offered an opinion on causal relationship, her opinion is of no probative value because audiologists are not considered to be qualified physicians within the meaning provided by FECA.¹² As the record in the instant case is devoid of any rationalized medical opinion evidence attributing appellant's hearing loss to his accepted employment exposure, appellant has failed to establish that his claimed binaural hearing loss is causally related to the accepted factors of his federal employment.¹³ Accordingly, appellant has not met his burden of proof to establish his claim.

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 that his binaural hearing loss was causally related to the accepted factors of his federal employment.

¹⁰ *Kenneth W. Cossey*, Docket No. 04-0976 (issued July 27, 2004).

¹¹ *Id.*

¹² *See Thomas Lee Cox*, 54 ECAB 509 (2003) (an audiologist is not defined as a physician under 5 U.S.C. § 8101(2) and an opinion of an audiologist cannot be considered a medical opinion by a qualified physician).

¹³ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the October 12, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2019
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