

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

_____)	
T.F., Appellant)	
)	
and)	Docket No. 19-1361
)	Issued: December 19, 2019
U.S. POSTAL SERVICE, NATIONAL PRINT CENTER, Topeka, KS, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 6, 2019 appellant filed a timely appeal from a May 22, 2019 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 this case.

ISSUE

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

FACTUAL HISTORY

On February 25, 2017 appellant, then a 50-year-old print line operator, filed an occupational disease claim (Form CA-2) alleging that he sustained significant sensorineural binaural hearing loss due to factors of his federal employment. He noted that he had been directly

¹ 5 U.S.C. § 8101 *et seq.*

exposed to “excessively loud noise” being produced from presses and machinery on a continuous and constant basis throughout his eight-hour workday, 40 hours a week, and year after year for 30 plus years. Appellant indicated that he first became aware of his condition on September 15, 2016 and its relationship to his federal employment on February 23, 2017. On the reverse side of the claim form, the employing establishment noted that he first reported his condition to his supervisor on February 28, 2017.

Appellant submitted audiograms performed by the employing establishment as part of a hearing conservation program dated August 25, 1987 through July 27, 2016.

Appellant also submitted a March 26, 2014 medical report from Kathleen Bogina, an audiologist. Ms. Bogina responded “yes” to the questions of whether he always wore hearing protection at work and that he had a normal bilateral appearing tympanic membrane evaluation with otoscopic screening.

In a February 20, 2017 medical report, Dr. Justin Tourtillott, an audiologist, noted that appellant reported a history that he was exposed to noise while working for 30 years at the employing establishment. As a press operator appellant was exposed to high levels of noise on a daily basis. He indicated that noise level surveys showed several areas of the plant where noise levels were damaging to hearing, especially around the Didde line. Appellant also reported consistent use of hearing protection at work. Oftentimes he wore double protection (foam plugs and earmuffs), but he still developed a headache from the constant noise exposure. Appellant had intermittent bilateral tinnitus and difficulty hearing family and friends. He denied any noise exposure outside the workplace and was not aware of any family history of hearing loss. Appellant maintained that baseline hearing testing from 1987 showed good hearing in both ears. Dr. Tourtillott reported an unremarkable otoscopic examination. On audiological examination, he reported that test results suggested moderate sloping to severe sensorineural hearing loss, bilaterally, slightly worse in the right ear. Type A tympanograms were noted bilaterally suggesting normal middle ear function. Reduced speech discrimination ability was also noted bilaterally. Dr. Tourtillott provided an impression of significant sensorineural hearing loss in both ears consistent with prolonged exposure to noise. He opined that appellant’s hearing loss was primarily due to work-related noise exposure at the employing establishment. Dr. Tourtillott recommended hearing aids and indicated that he would benefit from custom hearing protection.

An unsigned statement dated March 1, 2017, indicated that appellant was a computer print line production operator which required him to spend approximately five hours daily working on a print line while wearing mandatory hearing protection. His work schedule was Monday through Friday from 7:30 a.m. to 4:00 p.m.

OWCP, in a development letter dated March 10, 2017, requested information from the employing establishment, including 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 period of exposure, the types of ear protection and noise attenuation in decibels if known, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examination, and all audiograms. It also requested employment data and the date of last exposure to hazardous noise and the pay rate in effect on that date. OWCP afforded the employing establishment 30 days to respond.

OWCP subsequently received statements dated March 8, 2017, wherein C.S., appellant's former supervisor, and G.G., a computer maintenance supervisor, controverted appellant's claim. They each noted that the employing establishment had a hearing conservation program since 1984. The hearing conservation program required mandatory hearing protection for Didde and mail handler operators for lines 3 and 2. Hearing protection became mandatory in other areas in 2012. It was also recommended, but not mandatory, that operators in the offset press and pressure sensitive areas wear hearing protection. Hearing testing was performed yearly for all mail handlers who were operators or rotated as operators. Based on consultation with an industrial hygienist there were no known issues with the hearing conservation program. C.S. and G.G. indicated that appellant rotated as an operator with three other employees in April 2010.

OWCP subsequently received a noise survey report dated November 2016 and a copy of appellant's official computer print line production operator position description.

In a May 2, 2017 e-mail, E.D., an employing establishment manager, responded to OWCP's March 10, 2017 development letter. He noted that appellant was exposed to noise when he worked on Lines 1 and 3 as an operator and a packer/shipper and used a Heidelberg Didde press. E.D. related, however, that employees were responsible for wearing hearing protection in accordance with the employing establishment hearing conservation program and were not continuously exposed to such noise for eight hours a day. They were provided two 10-minute breaks and a 30-minute lunch break.

OWCP received additional audiograms dated November 18, 2005 through March 26, 2014 and an undated audiogram performed by the employing establishment as part of its hearing conservation program.

In an April 25, 2017 report, Dr. Tourtillott reiterated his prior diagnosis of noise-induced binaural hearing loss.

By letter dated June 30, 2017, QTC Medical Services, OWCP's scheduling contractor, referred appellant, together with a statement of accepted facts (SOAF), the medical record, and an otologic evaluation questionnaire, for a second opinion evaluation with Dr. Jay A. Dunfield, a Board-certified otolaryngologist.

In a June 14, 2017 report, Dr. Dunfield reviewed the SOAF, examined appellant, and completed the questionnaire. His report included an audiogram taken on June 15, 2017 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 40, 45, 30, and 55 decibels (dBs), respectively; the left ear losses were recorded as 35, 35, 30, and 35 dBs, respectively. In response to the evaluation questionnaire, Dr. Dunfield noted physical examination findings. He diagnosed sensorineural hearing loss due to noise exposure encountered in appellant's federal civilian employment. Dr. Dunfield reasoned that his noise exposure was significant enough to cause his hearing loss. He indicated that there was no other history to suggest other potential causes. Dr. Dunfield recommended hearing aids and hearing conservation.

On June 30, 2017 QTC Medical Services notified OWCP that appellant was only noise free for two hours prior to his examination by Dr. Dunfield although he wore earplugs. In a July 25,

2017 letter, OWCP advised appellant that he was required to avoid exposure to hazardous noise 16 hours prior to his second opinion examination. On July 26, 2017 QTC Medical Services again referred appellant to Dr. Dunfield for another second opinion evaluation regarding causal relationship between his hearing loss and federal employment.

Dr. Dunfield, in an August 14, 2017 report, noted appellant's history and complaints. He reviewed an audiogram performed on the same day which indicated that appellant was free from noise exposure for 16 hours prior to testing. Dr. Dunfield again diagnosed work-related sensorineural hearing loss.

On October 29, 2017 Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as an OWCP district medical adviser (DMA), reviewed the SOAF and appellant's medical records, including Dr. Dunfield's reports. He noted that the August 14, 2017 audiogram revealed moderate hearing loss bilaterally across the board. Dr. Israel related that this was not the typical pattern seen with a noise-induced work-related acoustic trauma. He found that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*² (A.M.A., *Guides*), appellant had 35.625 percent monaural hearing loss in both ears, which he rounded to a "35.6" percent binaural hearing loss. Dr. Israel determined that he reached maximum medical improvement (MMI) on August 14, 2017. He recommended yearly audiograms, noise protection for the ears, and authorization for hearing aids.

On November 2, 2017 OWCP requested that Dr. Israel clarify his prior report. It requested that he review Dr. Dunfield's June 14 and August 14, 2017 reports and state whether he agreed with his findings. OWCP also requested that he note that Dr. Dunfield's reports provided valid results and consistent effort by appellant.

In another report dated October 29, 2017, Dr. Israel reiterated that the August 14, 2017 audiogram showed a moderate loss across the board bilaterally. He noted that it differed from appellant's past audiograms. Dr. Israel indicated audiograms performed on March 7 and 23, 2006 had significant differing results. He further indicated that a July 27, 2016 audiogram showed severe to profound loss across the board in the right ear. The left ear had moderate hearing loss from 500 Hz to 3 kilohertz (KHZ) followed by a drop to severe loss at 6 to 8 KHZ. Dr. Israel related that he was concerned with how this compared to the August 14, 2017 audiogram and, therefore, he was not sure about its validity. He related that perhaps a Stenger test might determine whether there was malingering. Dr. Israel suggested that at least two other audiograms be performed to see how consistent they were with the August 14, 2017 audiogram. He stood by his previous comment that this was not the typical pattern seen with a noise-induced work-related acoustic trauma.

On November 21, 2017 QTC Medical Services again referred appellant to Dr. Dunfield for an additional otologic evaluation.

In a December 13, 2017 supplemental report, Dr. Dunfield noted no change in appellant's job requirements or responsibilities, noise exposure, use of hearing protection, and symptom complaints. He discussed findings on physical examination. Dr. Dunfield reiterated his prior

² A.M.A., *Guides* (6th ed. 2009).

diagnosis of binaural sensorineural hearing loss. He reviewed prior auditory brainstem response (ABR) test results and opined that these results were inadequate for hearing interpretation. Dr. Dunfield reasoned that first, the waveforms were too difficult to interpret correctly and the stimulus was a click, so no pure tone thresholds could be performed (the stimulus should be tone burst so hearing thresholds could be confirmed and determined whether they matched appellant's previous audiograms). He advised that overall this limited ABR did not answer the question of where real thresholds lie. Dr. Dunfield recommended a threshold search with a tone burst ABR and otoacoustic emission (OAE) match.

On February 2, 2018 QTC Medical Services referred appellant to Dr. Laina M. Burdick, an audiologist. In a letter dated February 6, 2018, Dr. Burdick noted that an otoscopic examination was unremarkable and that ABR testing was normal.

On March 6, 2019 QTC Medical Services referred appellant to Dr. Mary Horsch, an audiologist, for additional ABR and OAE testing. On March 21, 2019 Dr. Horsch reported that ABR/OAE results suggested near normal hearing through 2,000 Hz bilaterally with a mild high frequency loss from 3,000 to 4,000 Hz.

Dr. Dunfield, in addendum reports dated March 28 and April 19, 2019, discussed findings on physical examination. He noted that he reviewed Dr. Horsch's ABR/OAE test findings and agreed with her interpretation that appellant had normal threshold responses through 2,000 Hz and a slight hearing loss at 4,000 Hz consistent with normal aging of hearing. Dr. Dunfield advised that he did not have any significant hearing loss and that the previous pure tone audiograms should be disregarded and considered inaccurate. He concluded that, appellant had no significant hearing loss directly caused by his work-related noise exposure.

By decision dated May 22, 2019, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish that appellant's hearing loss was causally related to his accepted workplace noise exposure. It afforded the weight of the evidence to Dr. Dunfield.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ and 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.⁵ These are the essential elements of each and every

³ *Id.*

⁴ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

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) 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.⁷

Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.⁸ The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish binaural hearing loss causally related to the 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 him, along with the case record, a SOAF, and a list of questions to Dr. Dunfield for a second opinion examination. On June 14, 2017 Dr. Dunfield examined appellant and reviewed the medical record, including the audiogram performed on his behalf. He diagnosed binaural sensorineural hearing loss due to work-related noise exposure and recommended binaural hearing aids and hearing conservation. OWCP subsequently determined that additional otologic and audiological evaluations were necessary because appellant was not free from noise exposure for at least 16 hours before his examination by Dr. Dunfield. On August 14, 2017 Dr. Dunfield reexamined appellant as directed by OWCP

⁶ *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *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).

⁷ *Supra* note 4.

⁸ *C.C.*, Docket No. 18-1229 (issued March 8, 2019).

⁹ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

¹⁰ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

and reviewed an audiogram performed on that same day. He reiterated his prior diagnosis of work-related binaural sensorineural hearing loss.

On October 29, 2017 Dr. Israel, OWCP's DMA, reviewed the SOAF and appellant's medical records, including Dr. Dunfield's reports and the August 14, 2017 audiogram. He concluded that, in accordance with the sixth edition of the A.M.A., *Guides*, appellant had 35.6 percent binaural hearing loss. While Dr. Israel noted that the August 14, 2017 audiogram revealed moderate hearing loss bilaterally across the board, he maintained that this was not the typical pattern seen with a noise-induced work-related acoustic trauma. He determined that appellant had reached MMI on August 14, 2017 recommended yearly audiograms, noise protection for the ears, and requested authorization for hearing aids.

OWCP obtained a supplemental report from Dr. Israel, who recommended additional audiological testing because earlier audiograms were not consistent with the August 14, 2017 audiogram findings.

On December 13, 2017 Dr. Dunfield again examined appellant and continued to diagnose binaural sensorineural hearing loss. He reviewed prior ABR test results and explained why these results were inadequate for hearing interpretation. Dr. Dunfield recommended additional testing with ABR testing along with OAE testing.

In addendum reports dated March 28 and April 19, 2019, Dr. Dunfield reviewed Dr. Horsch's March 21, 2019 ABR and OAE test results and agreed with her interpretation that the test results revealed near normal hearing through 2,000 Hz bilaterally and a slight hearing loss at 4,000 Hz consistent with normal aging of hearing. He opined that appellant had no significant hearing loss directly caused by his work-related noise exposure.

The Board finds that Dr. Dunfield's March 28 and April 19, 2019 reports represent the weight of the medical evidence and establish that appellant's binaural hearing loss was not due to exposure to noise in the workplace.¹¹ Dr. Dunfield's opinion is based on a proper factual and medical history as he reviewed current and previous audiometric test results and related his findings on examination and testing in support of his opinion that appellant's hearing loss was not due to the noise in his federal employment.¹²

Although audiologist Dr. Tourtillott offered an opinion on causal relationship, his opinion is of no probative value because audiologists are not considered qualified physicians within the meaning provided by FECA.¹³ Moreover, the employing establishment audiograms do not constitute probative medical evidence as they lack proper certification of calibration, speech

¹¹ *R.M.*, Docket No. 18-1801 (issued March 25, 2019); *R.B.*, Docket No. 18-0720 (issued November 13, 2018); *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹² *R.M.*, *id.*; *R.B.*, *id.*; *T.T.*, Docket No. 17-0471 (issued August 8, 2017).

¹³ See *H.M.*, Docket No. 19-0188 (issued April 26, 2019); *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).

testing, and bone conduction scores and were not prepared or certified as accurate by a physician as defined under FECA.¹⁴

As the record in the instant case is devoid of rationalized medical opinion evidence attributing appellant's hearing loss to his accepted employment exposure, the Board finds that he has not established that his claimed binaural hearing loss is causally related to the accepted factors of his federal employment.¹⁵ 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 met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

¹⁴ See *R.M.*, *supra* note 11; *R.B.*, Docket No. 18-0720 (issued November 13, 2018); *M.I.*, Docket No. 16-0759 (issued June 10, 2016).

¹⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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