

hearing loss due to factors of his federal employment. He indicated that he first became aware of his condition, and its relationship to his federal employment on May 1, 2015. On the reverse side of the claim form, the employing establishment noted that appellant first received medical care on October 4, 2016 from federal employment on November 12, 2016 and first reported his condition to his former supervisor on June 30, 2017.

In a federal occupational hearing loss claim form dated June 30, 2017, appellant related that he had a history of tinnitus. He attached a summary of his employment history.

In a development letter dated July 21, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate letter of even date, OWCP requested information from the employing establishment relevant to appellant's hearing loss claim, including all audiograms. It afforded both parties 30 days to respond.

In a completed development questionnaire dated July 31, 2017, appellant indicated that he had not previously filed a claim for hearing loss and did not have hobbies involving exposure to loud noises.

In a letter dated August 21, 2017, the employing establishment controverted appellant's claim. It indicated that he began employment on May 17, 2015, but he was employed in a sedentary desk position capacity. The employing establishment noted that appellant was exposed to years of loud noises while sandblasting during his employment at the Naval Shipyard, which was his place of employment prior to May 17, 2015.

By decision dated October 20, 2017, OWCP denied appellant's hearing loss claim finding that the evidence of record was insufficient to establish the factual component of his claim. Specifically, it noted that the record contained a conflicting factual history concerning his work activities on or about May 2015.

On April 27, 2018 appellant requested reconsideration of OWCP's October 20, 2017 decision. He submitted additional evidence.

In a statement dated April 17, 2018, appellant related that he was exposed to noise two to three hours per day from 1993 to 2016 when he was employed by both the Puget Sound Naval Shipyard and Defense Logistics Agency.

On July 12, 2018 OWCP referred appellant, together with a statement of accepted facts which summarized appellant's exposure to hazardous noise, to Dr. Edward Treyve, a Board-certified otolaryngologist, for a second opinion evaluation to determine whether appellant sustained employment-related hearing loss.

In a report dated September 4, 2018, Dr. Treyve noted appellant's history and complaints, and provided audiometric test results. The audiogram performed on Dr. Treyve's behalf by Rachel Shannon, an audiologist, reflected testing at frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) which revealed the following: right ear 15, 10, 5, and 10 decibels (dBs), respectively, left ear 25, 15, 25, and 30 dBs, respectively. Dr. Treyve indicated that the audiogram revealed normal hearing on the right with a mild-to-severe downsloping sensorineural loss on the left. He

diagnosed “unilateral sensorineural hearing loss” involving the left ear. Dr. Treyve related that while appellant worked in a noisy environment for several years, there was no evidence of hearing loss in the right ear and he had a severe high-frequency hearing loss in the left ear. Furthermore, he noted that occupational noise exposure was almost always bilateral and symmetric, and as such, he did not believe that the hearing loss in appellant’s left ear was related to occupational noise exposure. Dr. Treyve opined that the hearing loss in the left ear was related to viral causes or possibly a retrocochlear lesion.

By decision dated September 19, 2018, OWCP affirmed the October 20, 2017 decision, as modified. It found that the evidence presented was sufficient to satisfy that appellant sustained hearing loss in his left ear. However the evidence of record was insufficient to establish that appellant’s hearing loss was caused by noise exposure during 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 time limitation period of FECA,³ 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.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 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 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.⁶

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,

² *Id.*

³ *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).

⁴ *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).

⁵ *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).

⁶ *Supra* note 4.

is sufficient to establish causal relationship.⁷ The medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁸ 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.⁹

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.

Appellant has not submitted medical evidence which provides an opinion regarding the cause of his alleged binaural sensorineural hearing loss. However, OWCP referred appellant to Dr. Treyve for a second opinion evaluation regarding appellant's hearing loss claim. He concluded that appellant did not have sensorineural hearing loss due to his federal employment. In a report dated September 4, 2018, Dr. Treyve related appellant examination findings, reviewed the statement of accepted facts, and diagnosed unilateral sensorineural hearing loss involving the left ear. He noted that occupational noise exposure was almost always bilateral and symmetric, and opined that the hearing loss in appellant's left ear was not related to occupational noise, but rather was related to viral causes or possibly a retrocochlear lesion.

The Board finds that Dr. Treyve's September 4, 2018 report represents the weight of the medical evidence and establishes that appellant's sensorineural hearing loss was not due to exposure to noise in the workplace.¹⁰ Dr. Treyve's opinion is based on a proper factual and medical history as he reviewed current 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 exposure to noise in his federal employment.¹¹

The Board thus finds that the medical evidence of record is insufficient to establish that he had sensorineural hearing loss causally related to the accepted factors of his federal employment. Appellant has not met his burden of proof.¹²

⁷ *C.C.*, Docket No. 18-1229 (issued March 8, 2019).

⁸ *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

⁹ *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹⁰ *R.B.*, Docket No. 18-0720 (issued November 13, 2018); *see R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹¹ *R.B.*, *id.*; *see T.T.*, Docket No. 17-0471 (issued August 8, 2017).

¹² *J.B.*, Docket No. 17-0984 (issued July 11, 2018); *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

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 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.

ORDER

IT IS HEREBY ORDERED THAT the September 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 15, 2019
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