

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

K.C., Appellant)	
)	
and)	Docket No. 19-1185
)	Issued: November 12, 2019
)	
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 3, 2019 appellant filed a timely appeal from a January 16, 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 that he developed binaural hearing loss causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 14, 2018 appellant, then a 53-year-old deputy project superintendent, filed an occupational disease claim (Form CA-2) alleging that he had developed binaural hearing loss

¹ 5 U.S.C. § 8101 *et seq.*

due to exposure to hazardous noise in the course of his federal employment. He noted that he first became aware of his claimed condition and its relation to his federal employment on September 5, 2013.

In support of his claim, appellant provided an April 4, 2017 report from Dr. Todd Jones, an otolaryngologist, who noted gradual hearing loss and that appellant first became aware of same in 2013. He denied tinnitus or vertigo. Dr. Jones diagnosed sensorineural hearing loss and recommended hearing aids. Appellant also underwent an audiogram on February 22, 2017. He provided a September 5, 2013 audiogram and audiologic report which diagnosed asymmetrical hearing loss.

In an October 24, 2018 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence from him and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of his statements, describe the sources of exposure to noise, and provide a copy of all medical examinations and audiograms pertaining to hearing or ear problems. OWCP again afforded appellant 30 days to respond.

On October 26, 2017 appellant provided his employment history as a sheet metal mechanic from 1982 through 1987, a ship fitter from 1987 through 1997, and as a deputy project superintendent beginning in 1997. He alleged that he was exposed to noise from chippers, grinders, sandblasters, as well as to noise from ship checks and job oversite on the waterfront. On October 30, 2018 appellant responded to OWCP's questions and noted that his hearing loss was detected during the annual hearing test administered by the employing establishment.

On November 12, 2018 the employing establishment provided copies of appellant's yearly audiogram findings from August 4, 1984 through September 5, 2013.

On December 14, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), and otologic evaluation, for an audiogram and second opinion evaluation with Dr. Edward Treyve, a Board-certified otolaryngologist.

In his January 3, 2019 report, Dr. Treyve reviewed appellant's history of employment-related noise exposure and his audiogram. He found mild-to-moderate high-frequency sensorineural loss on the right and moderate-to-severe sensorineural loss on the left. Dr. Treyve diagnosed binaural asymmetric sensorineural hearing loss. He opined that appellant's hearing loss was not related to occupational noise exposure. Dr. Treyve noted that occupational noise-induced hearing loss was typically fairly symmetric, while appellant had left-sided high-frequency hearing loss dating back to 2004 with normal hearing in the right ear through 2013. He also noted that occupational noise-induced hearing loss did not typically manifest late in the career and that appellant's hearing on the right was normal in 2013, 31 years after the start of employment. Dr. Treyve further noted that during appellant's last 21 years of employment he had minimal noise exposure. He concluded that the cause of appellant's current hearing loss on the right was presbycusis. Dr. Treyve further determined that the asymmetry of hearing loss on the left was related to causes other than occupational noise exposure or presbycusis such as a possible retrocochlear lesion. He found that while workplace exposure was of sufficient intensity and

duration to have contributed to appellant's hearing loss, he did not believe that it did so, due to mitigation through proper ear protection.

By decision dated January 16, 2019, OWCP accepted that appellant had noise exposure during the course of his federal employment and accepted that the medical evidence supported binaural high frequency sensorineural hearing loss. However, it denied his occupational disease claim finding that the medical evidence of record failed to establish causal relationship between his hearing loss and his accepted employment exposure.

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 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

In an occupational disease claim, to establish that an injury was sustained in the performance of duty, 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;⁶ (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁷ and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.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

² *Id.*

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 *C.C.*, Docket No. 18-1229 (issued March 8, 2019); *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *R.A.*, Docket No. 16-1218 (issued November 10, 2016); *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁸ *T.J.*, Docket No. 17-1850 (issued February 14, 2018); *Beverly A. Spencer*, 55 ECAB 501 (2004).

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

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 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.¹¹

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.

OWCP referred appellant to Dr. Treyve for a second opinion evaluation regarding appellant's hearing loss claim. Dr. Treyve concluded that appellant did not have sensorineural hearing loss due to his federal employment. In a report dated January 3, 2019, he related examination findings, reviewed the SOAF and diagnosed bilateral sensorineural hearing loss with asymmetry involving the left ear. Dr. Treyve noted that occupational noise exposure was typically fairly symmetric and opined that the hearing loss in appellant's left ear was not related to occupational noise, but rather was related to a possible retrocochlear lesion.

The Board finds that Dr. Treyve's January 3, 2019 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.¹² 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.¹³

As the medical evidence of record is insufficient to establish that appellant had binaural hearing loss causally related to the accepted factors of his federal employment, appellant has not met his burden of proof.¹⁴

¹⁰ *T.K.*, Docket No. 19-0074 (issued May 15, 2019); *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

¹¹ *C.C.*, *supra* note 6.

¹² *T.K.*, *supra* note 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).

¹³ *R.B.*, *id.*; *see R.J.*, *id.*; *J.L.*, *id.*

¹⁴ A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

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

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 12, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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