



hazardous noise. He noted that he first became aware of his condition and related it to his federal employment on January 1, 2012. On the reverse side of the claim form, appellant's supervisor indicated that he was last exposed to the conditions that he alleged to have caused his hearing loss on November 27, 2015, the same date that he first reported his condition to his supervisor.

Accompanying appellant's claim form was a February 17, 2016 statement noting a history of noise exposure to weapons fire for approximately three hours a day while serving in the U.S. Marine Corps from 1987 to 1991.<sup>2</sup> Beginning in 1994, appellant worked as a police officer at the employing establishment, with exposure to noise while patrolling industrial areas due to "trades working, vehicles, equipment, etc." He noted that he was not provided hearing protection as it would have interfered with the performance of his patrol duties. Appellant also mentioned a history of a possible "inner ear virus."

Along with the claim form, OWCP also received several employing establishment audiograms, including a September 22, 1994 audiogram obtained by the employing establishment preemployment as part of a hearing conservation program.<sup>3</sup> An audiologist noted in the March 12, 2008 report that the audiogram demonstrated an asymmetrical hearing loss, worse on the left, that required a fitness and risk evaluation. On April 17, 2008 an employing establishment audiologist noted a chronic conductive hearing loss, considerably more severe on the left. He noted that appellant has a nonoccupational medical issue -- "fit for duty re: hearing" and that audiograms were to be repeated annually. The audiogram further noted that appellant's personal physician diagnosed a nonoccupational ruptured left eardrum in approximately 2003. A March 24, 2010 audiogram demonstrated decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz (Hz) in the right ear of 10, 15, 15, and 25 decibels (dBs) respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 35, 20, 25, and 50 dBs respectively. In the audiometric report, an employing establishment audiologist noted appellant's history of an unspecified ear disorder possibly requiring surgery.

In a March 7, 2016 development letter, OWCP notified appellant that the evidence submitted was insufficient to establish that he actually experienced the employment factors alleged to have caused his hearing loss. It further noted that the evidence submitted was insufficient to support that he was injured while in the performance of duty. OWCP advised appellant of the type of additional evidence needed to establish his claim, including factual evidence documenting any workplace exposure to hazardous noise, and provided a questionnaire for his completion in order to substantiate the factual elements of his claim. The questionnaire specifically asked appellant to describe all previous ear or hearing problems and provide medical reports and audiograms if he had been examined or treated by a physician for an ear or hearing problem. It also specifically noted that the March 24, 2010 audiometric report indicated that appellant "[h]as known ENT disorder, may have surgery," and requested that he provide details explaining that annotation. The

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<sup>2</sup> Appellant indicated that safety devices were provided and used to protect against noise exposure.

<sup>3</sup> In addition to the September 22, 1994 audiogram, the record contains audiograms dated 1996 through 2001, 2005, 2008, and 2010. A February 28, 2014 2014 health record noted that appellant failed to keep his February 13, 2014 appointment with an audiologist. None of the audiograms are signed or reviewed by a physician.

questionnaire also asked appellant to describe any hobbies which involve exposure to loud noise. Appellant was afforded 30 days to submit the necessary evidence.

Appellant subsequently submitted a March 15, 2016 cover letter and an attached March 7, 2016 audiogram and prepared by an audiologist associated with a private sector hearing aid clinic. The audiogram demonstrated decibel losses at the frequency levels of 500, 1,000, 2,000, and 3,000 Hz in the right ear of 20, 30, 40, and 45 dBs respectively. Testing at the same frequency levels for the left ear revealed decibel losses of 55, 60, 70, and 70 dBs respectively. Neither the audiogram, nor the cover letter were signed by a physician.

By decision dated June 14, 2016, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that he was exposed to hazardous noise at the employing establishment as alleged. It noted that he failed to respond to the questions regarding exposure to loud noise in his federal and nonfederal employment, and failed to provide a description of previous hearing problems.

On July 14, 2016 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In an accompanying statement dated March 10, 2016, he responded to OWCP's development questionnaire. Appellant noted exposure to loud noise while serving in the U.S. Marine Corps from 1987 to 1991, where as a rifleman, he was exposed to "various weaponry and machinery." He also noted his previous employment performing security at a mall from 1992 to 1993, which involved "normal mall noise exposure." As a police officer at the employing establishment beginning in 1994, appellant indicated that he was exposed to weapons fire during unspecified biannual activities, and to industrial noise at the employing establishment. He indicated that he continued to be exposed to hazardous noise at work and asserted that his hearing had progressively worsened over the years. After failing annual hearing tests, appellant consulted with his family doctor who referred him to an otolaryngologist in approximately 2011, who "stated that some people have seen hearing loss stopped with surgery, but recommended against it due to the range of hearing loss" and his young age. He asserted that he had no hobbies involving loud noise exposure, noting that he used hearing protection when completing repetitive chores at home involving "mowers, saws, blowers, weed trimmers and hammers."

By decision dated December 5, 2016, an OWCP hearing representative affirmed OWCP's June 14, 2016 decision. He explained that, while appellant has answered the questions posed by OWCP in its March 7, 2016 development letter, the factual evidence was still insufficiently descriptive of noise heard at work to establish hazardous noise exposure in the performance of duty as alleged. The hearing representative further found that appellant did not submit a medical opinion from a physician diagnosing hearing loss or explaining its cause.

### **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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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 diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> 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.<sup>9</sup> 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).<sup>10</sup>

### ANALYSIS

The Board finds that appellant has not established binaural hearing loss in the performance of duty, as alleged.

Appellant claimed that he sustained a bilateral hearing loss causally related to occupational exposure to hazardous noise. In his February 17, 2016 statement, he noted a history of noise exposure to weapons fire for approximately three hours a day while serving in the U.S. Marine Corps from 1987 to 1991. Beginning in 1994, appellant worked as a police officer at the employing establishment, with exposure to noise while patrolling industrial areas due to "trades working, vehicles, equipment, etc." He noted that he was not provided hearing protection as it

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<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>8</sup> *H.M.*, Docket No. 19-0188 (issued April 26, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Id.*

would have interfered with the performance of his patrol duties. Appellant also mentioned a history of a possible “inner ear virus.”

OWCP, in its March 7, 2016 development letter, informed appellant that the evidence submitted was insufficient to establish the factual elements of his claim. It requested additional factual evidence and provided a questionnaire for his completion that sought additional detail regarding the alleged occupational exposure and any nonoccupational ear or hearing conditions and exposure.

In his March 10, 2016 statement, received with his request for a review of the written record, appellant noted exposure to loud noise while serving in the U.S. Marine Corps from 1987 to 1991, where as a rifleman, he was exposed to “various weaponry and machinery.” He also noted his previous employment performing security at a mall from 1992 to 1993, which involved “normal mall noise exposure.” As a police officer at the employing establishment beginning in 1994, appellant indicated that he was exposed to weapons fire during unspecified biannual activities, and to industrial noise at the employing establishment. He indicated that he continued to be exposed to hazardous noise at work and asserted that his hearing had progressively worsened over the years. After failing a series of annual hearing tests, appellant consulted with his family doctor who referred him to an otolaryngologist in approximately 2011, who “stated that some people have seen hearing loss stopped with surgery but recommended against it due to the range of hearing loss” and his young age. He asserted that he had no hobbies involving loud noise exposure, noting that he used hearing protection when completing repetitive chores at home involving “mowers, saws, blowers, weed trimmers and hammers.”

The Board finds that the factual evidence of record lacks sufficient detail to establish appellant’s claim.<sup>11</sup> Appellant has not described with adequate detail what type of specific noise that was generated in the industrial area where he worked. It remains unknown whether the industrial areas are indoors or outdoors, and what his proximity was to any sources of loud noise. Furthermore, while appellant noted exposure to firearm noise biannually, he has not described the circumstances during which such exposure occurred, such as the duties he was performing or the duration of his exposure.

As the factual evidence of record is insufficiently detailed to establish appellant’s claim, the Board finds that he has not met his burden of proof.

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 binaural hearing loss in the performance of duty, as alleged.

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<sup>11</sup> *Supra* note 7.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 5, 2016 decision of the Office of Workers' Compensation Programs is affirmed.<sup>12</sup>

Issued: September 26, 2019  
Washington, DC

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

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

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<sup>12</sup> Colleen Duffy Kiko, Judge, participated in the original decision, but was no longer a member of the Board effective December 11, 2017.