



## **FACTUAL HISTORY**

On July 21, 2017 appellant, then an 80-year-old retired electrical engineer, filed an occupational disease claim (Form CA-2) alleging that he developed gradual and progressive bilateral hearing loss due to noise exposure. He noted that he first became aware of the condition and its relationship to his federal employment on January 1, 1994. The employing establishment noted that appellant had retired effective September 30, 1994.

With his claim, appellant attached employing establishment hearing conservation data and audiograms dated from May 9, 1961 to January 14, 1994. A list of audiograms from June 7, 1969 to July 10, 1979 described noise exposure from 1960 through 1968 of chipping and other shipboard noise. Appellant also attached the results of an audiogram dated March 13, 2017.

On April 6, 2017 appellant signed an employment history summary. The summary indicated that: from 1956 through 1960 he worked for the United States Air Force as a fire control technician, where he was exposed to noise from jet engines; from 1961 through 1966 he worked at the Puget Sound Naval Shipyard as an electronic technician, where he was exposed to noise from the waterfront, chippers, grinders, sandblasters, deck crawlers, pneumatic noises, and other sources for eight hours per day; from 1966 through 1969 he worked at the 13<sup>th</sup> Naval District in Seattle, Washington as a supervisor of shipbuilding, where he was exposed to noise from the waterfront, new construction of ships, and electronics for eight hours per day; from 1969 through 1994 he worked at the Naval Undersea Warfare Center in Keyport, Washington as an electrical engineer, where he was exposed to noise from the waterfront and on ships. Appellant indicated that, after his retirement in 1994, he worked for British Airways as a senior engineer in an office environment until 2001. In an attached checklist for a federal occupational hearing loss claim, signed on April 6, 2017, he indicated that he had no history of ear or hearing problems, no hobbies involving exposure to loud noise, and no prior claims for workers' compensation benefits for conditions involving the ears or hearing.

In a development letter dated July 24, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence necessary to establish his claim and provided a questionnaire for completion regarding noise exposure. OWCP afforded him 30 days to respond.

In a separate letter dated July 24, 2017, OWCP requested that the employing establishment provide information regarding appellant's claimed noise exposure. Specifically, it asked the employing establishment to provide comments from a knowledgeable supervisor regarding the accuracy of appellant's statements relative to his claim and to indicate whether it concurred with his allegations. OWCP requested information regarding the locations of job sites where exposure allegedly occurred, the sources of exposure to noise, the decibel and frequency level (per noise survey report) for each job site, the period of exposure (hours per day and days per week), and the types of ear protection provided. It also asked the employing establishment to provide copies of appellant's job sheet, employment record, and application for federal employment (Form SF-171). OWCP noted that in the absence of a full reply from the employing establishment, OWCP could accept his allegations as factual.

In a letter dated August 7, 2017, the employing establishment responded that, because appellant had retired from federal service in 1994, no additional comments could be obtained from

a knowledgeable supervisor.<sup>2</sup> It indicated that, for the same reason, it could not respond to the inquiry regarding noise exposure. The employing establishment confirmed that appellant had been part of a hearing conservation program and had been provided safety devices for his positions between June 7, 1969 and January 14, 1994. In response to the inquiry regarding his job history, it referred to appellant's previously submitted employment history dated April 6, 2017.

On August 9, 2017 appellant resubmitted the April 6, 2017 employment history, along with previously submitted hearing conservation data and audiograms. He also resubmitted his signed response to the development questionnaire.

By decision dated December 18, 2017, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish the factual component of fact of injury because his claimed work exposure remained unclear.

On January 16, 2018 appellant requested reconsideration. In an attached letter dated January 10, 2018, he described his employment-related noise exposure.

By decision dated February 21, 2018, OWCP denied appellant's request for reconsideration without reviewing the merits of his claim.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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, 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>4</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>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee 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 employee.<sup>6</sup>

---

<sup>2</sup> A notification of personnel action (Form SF-50) recorded that appellant had retired with a separation incentive under the Civil Service Retirement System effective September 29, 1994, with a service compensation date of May 10, 1957.

<sup>3</sup> *Id.*

<sup>4</sup> *D.J.*, Docket No. 19-1387 (issued December 20, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *Roy L. Humphrey*, 57 ECAB 238 (2005).

Appellant's burden of proof includes the submission of a detailed description of the employment factors which he believes caused or adversely affected a condition for which compensation is claimed.<sup>7</sup>

### ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision.

In support of his claim, appellant has submitted an employment history summary of his noise exposure at various employing duty stations with the employing establishment from 1961 to 1994. During this lengthy time period he has indicated that he was exposed to multiple noise sources including: chippers, grinders, sandblasters, deck crawlers, pneumatic noise, as well as noise from ship construction activities, and naval waterfront activities. Appellant has also submitted audiograms which establish that he was enrolled in employing establishment hearing conservation programs for the entire time he worked at these duty stations. He therefore has sufficiently identified the employment factors alleged to have caused or contributed to his condition.<sup>8</sup>

OWCP sent a development letter, dated July 24, 2017, to the employing establishment requesting that it provide specific information regarding appellant's claimed noise exposure. This was to include comments from a knowledgeable supervisor regarding the accuracy of all statements provided by appellant relative to his claim. The employing establishment responded on August 7, 2017 that because appellant had retired from the federal service in 1994, no additional comments could be obtained from a knowledgeable supervisor, and it could not describe the sources, periods, or sound levels of appellant's claimed noise exposure. However, the employing establishment confirmed that appellant had participated in a hearing conservation program and had been provided protective hearing devices from 1969 to 1994. Given the circumstances presented, the Board finds that appellant's allegation that he was exposed to various sources of hazardous noise during the performance of his federal employment is accepted as factual. Therefore, the case will be remanded to OWCP to evaluate the medical evidence and determine whether he has met his burden of proof to establish an occupational hearing loss causally related to the accepted employment noise exposure.<sup>9</sup> Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>10</sup>

### CONCLUSION

The Board finds that this case is not in posture for decision.

---

<sup>7</sup> *S.J.*, Docket No. 17-1798 (issued February 23, 2018).

<sup>8</sup> *Supra* note 6.

<sup>9</sup> D.C., *id.*; A.R., Docket No. 18-0924 (issued August 13, 2019); *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>10</sup> In light of the Board's disposition in Issue 1, Issue 2 is rendered moot.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 21, 2018 and December 18, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 1, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board