United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 18-1011**
	)	**Issued: March 23, 2020**
TENNESSEE VALLEY AUTHORITY,	)	
West Paducah, KY, Employer	)	
	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On April 17, 2018 appellant filed a timely appeal from a February 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 22, 2017 appellant, then a 62-year-old boilermaker, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss due to factors of his federal employment. He noted that he first became aware of his hearing loss on March 30, 2015

[1] 5 U.S.C. § 8101 *et seq.*

and first realized its relation to his federal employment on March 15, 2016. Appellant retired from the employing establishment on March 31, 2017.

In a February 27, 2017 development letter, OWCP advised appellant of the type of evidence needed to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the requested information. In a separate letter of even date, OWCP requested that the employing establishment address the accuracy of appellant's allegations and describe his workplace exposure to hazardous noise.

OWCP subsequently received a statement wherein appellant related his employment history. Appellant noted that he had worked as a boilermaker at various locations from 1995 to the present, with intermittent breaks in employment. He indicated that he worked in the powerhouse basement around hazardous noise and loud machinery including: changing heads and gaskets; flushing coolers; fixing leaks on boiler feed pumps; changing belts on primary air fans; changing pulverizer balls; replacing links on drag chains; repairing steam leaks on steam lines and soot blowers; and using grinders, cut off saws, needle guns, jitterbug, shear, ironworker, jackhammers, and hydraulic presses in the shop area. Appellant further indicated that he had no previous hearing problems and noted occasional hunting as a hobby. He attributed his hearing loss to his federal employment on March 15, 2016 when his ears began to ring continuously and he had to progressively increase the volume on the television.

The employing establishment subsequently provided appellant's employment history for intermittent dates from November 21, 1987 to December 2016. Its medical records from September 24, 1981 to June 30, 2000 noted an initial employment examination, yearly physical examinations, and treatment for burns and cuts.

In an audiometric evaluation dated April 26, 2000, appellant reported nonoccupational activities of hunting and shooting for 40 years, and exposure to loud music, home power tools, home tractor and machinery, power boats, and motorcycles over a 20-year period. In a medical examination record dated June 30, 2000, he indicated that he had a history of hearing loss in his right ear.

The employing establishment referred appellant to Dr. Whitney R. Mauldin, an audiologist, for an audiological examination. In a report dated April 26, 2017, Dr. Mauldin indicated that he had a history of federal employment for various periods from September 1981 to December 1991 and from June 2000 to March 2017. From December 1991 to June 2000, appellant worked in nonfederal employment. Dr. Mauldin opined that he did not meet the criteria to establish that his hearing loss was causally related to exposure to noise at work. She noted that appellant's baseline hearing examination was performed on December 19, 2001. Dr. Mauldin summarized the results of audiograms obtained from December 19, 2001 to March 31, 2017. She noted that appellant reported using hearing protection from April 5, 2009 to March 31, 2017 in the form of push-in devices, ear soft plugs, ear express pod plugs, ultra-fit plugs, and ear soft super fit plugs. Dr. Mauldin described his nonoccupational noise exposure, including exposure to firearms, chain saws, farm machinery, power tools, and noise exposure at another company for various dates from 2009 to 2016.

By decision dated May 5, 2017, OWCP denied the claim finding that the factual evidence of record was insufficient to establish that the alleged employment factors occurred as described.

On November 30, 2017 appellant requested reconsideration.

In a statement dated March 21, 2017, appellant's supervisor noted that the employing establishment employees had been provided with hearing protection options since 1972. He indicated that as part of its safety procedures appellant had received annual training regarding levels of noise considered hazardous. The manager confirmed that appellant's description of his job titles was accurate. He further noted as a boilermaker that appellant would have worked around air-operated valves, boiler feed pumps, pulverizers, air compressors, and draft fans. The manager indicated that the ambient noise level in any of appellant's work environments could range from 40 to 90 decibels (dBs), but with mandatory hearing protection the ambient noise was reduced by 28 to 33 dBs. He advised that appellant would be exposed for a maximum of six hours on a regular workday.

On December 7, 2017 the employing establishment appellant had been an employee from September 24, 1981 to November 21, 1987 at an unspecified job. Appellant worked for the employing establishment as a boilermaker from September 27 to October 22, 1988, November 14 to December 10, 1988, January 20 to April 29, 1989, May 22 to June 3, 1989, July 19, 1989 to June 29, 1991, and from August 29 to December 14, 1991. He performed nonfederal employment from December 14, 1991 to June 19, 2000. Appellant again worked for the employing establishment as a boilermaker/maintenance technician from June 19, 2000 to September 20, 2014, as a fossil mechanic technician from September 20, 2004 to July 14, 2014, and as a boilermaker from June 14, 2014 to March 31, 2017, the date he retired. The employing establishment provided objective sound level measurements conducted for his job title and noted that he used ear plugs during his federal employment. It advised that medical records demonstrated preexisting hearing loss, including a baseline examination dated December 19, 2001. The employing establishment noted that appellant had indicated that he was exposed to loud noise outside of his employment, including noise from farm machinery, power tools, loud music, and firearms.

An audiogram conducted by an audiologist on December 11, 2017 revealed mild-to-moderate sensorineural hearing loss bilaterally with amplification indicated.

On January 25, 2018 OWCP referred appellant to Dr. Rudolf J. Triana, a Board-certified otolaryngologist, for a second opinion examination. In an accompanying statement of accepted facts (SOAF), it indicated that he had worked for the employing establishment for intermittent dates from 1995 to 2007 and that he had no history of nonfederal employment.

In a February 19, 2018 report, Dr. Triana discussed appellant's primary complaint of tinnitus that had begun two years earlier. He diagnosed binaural hearing loss. Dr. Triana advised that the external auditory canals were dry and he noted reduced drum motility without evidence of acoustic neuroma or Meniere's disease. Audiometric testing performed for him on February 8, 2018 at the frequency levels of 500, 1,000, 2,000, and 3,000 hertz revealed the following losses: right ear 30, 25, 30, and 50 dBs; left ear 30, 25, 30, and 60 dBs. Dr. Triana indicated that there was no audiometric evaluation noted at the beginning of federal employment, but that appellant had reported on intake forms that he had a long history of hearing loss secondary to work exposure,

firearm use, and loud music. He opined that it was unlikely that workplace exposure was of sufficient intensity and duration to have caused the loss in question, noting that appellant had worn mandatory hearing protection and had not complained of hearing issues prior to retirement. Dr. Triana advised that appellant had a history of 20 years of exposure to firearms, loud music, equipment, and race cars and had complained of hearing problems prior to his federal employment. He opined that the sensorineural hearing loss was not due to noise exposure encountered in appellant's federal employment. Dr. Triana advised that the current audiogram showed bilateral symmetric sensorineural hearing loss, worse in the higher frequencies. He recommended lipo flavonoids for tinnitus and mandatory hearing protection when operating machinery, discharging firearms, and listening to loud music.

By decision dated February 22, 2018, OWCP modified the May 5, 2017 decision finding that appellant had established that the employment factors occurred as alleged. However, the claim remained denied as the medical evidence of record was insufficient to establish that the hearing loss was causally related to workplace noise exposure. OWCP afforded the weight of the medical evidence to Dr. Triana's February 19, 2018 report in which he opined that appellant's current hearing loss was not due to noise exposure from federal employment.

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,[2] 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.[3] 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.[4]

In an occupational disease claim, appellant's burden requires submission of 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.[5]

[2] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[3] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[4] *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).

[5] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[6] 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.[7]

ANALYSIS

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

OWCP accepted that appellant sustained noise exposure during the course of his federal employment and referred him, together with a SOAF, to Dr. Triana for a second opinion examination to determine whether he had sustained hearing loss causally related to his accepted noise exposure. The SOAF provided to Dr. Triana indicated that he had worked for the employing establishment for intermittent dates from 1995 to 2007 and that he had no history of nonfederal employment. The employing establishment, however, advised that it had employed appellant from September 24, 1981 to November 21, 1987 in an unspecified position. Appellant subsequently worked for the employing establishment as a boilermaker from September 27 to October 22, 1988, November 14 to December 10, 1988, January 20 to April 29, 1989, May 22 to June 3, 1989, July 19, 1989 to June 29, 1991, August 29 to December 14, 1991, June 19, 2000 to September 20, 2014, and June 14, 2014 to March 31, 2017. He additionally worked for the employing establishment as a fossil mechanic technician from September 20, 2004 to July 14, 2014. Appellant worked in nonfederal employment from December 1991 to June 2000.

In a report dated February 19, 2018, Dr. Triana diagnosed bilateral sensorineural hearing loss unrelated to noise exposure during the course of appellant's federal employment. He noted that appellant had an extensive history of noise exposure to firearms, loud music, equipment, and race cares. Dr. Triana determined that appellant's workplace exposure was likely insufficient to have caused the loss in question as appellant had used hearing protection. He further opined that appellant had complained of hearing issues prior to beginning federal employment.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.[8] OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.[9]

[6] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

[7] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

[8] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *C.D.*, Docket No. 18-1652 (issued June 26, 2019).

[9] *Id.*; *see also N.W.*, Docket No. 16-1890 (issued June 5, 2017).

As Dr. Triana relied upon an inaccurate SOAF, his opinion is of diminished probative value.[10] He opined that appellant's sensorineural hearing loss was not due to noise exposure encountered in his federal employment, noting that he had complained of hearing problems prior to his federal employment. As discussed, however, Dr. Triana did not demonstrate knowledge that appellant's federal employment began in 1981 or that he began working as a boilermaker in 1988. He failed to rely upon a complete and accurate employment history, and thus his opinion is of diminished probative value.[11]

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence.[12] Once OWCP undertook development of the evidence by referring appellant to a second opinion physician, it had the duty to secure an appropriate report addressing the relevant issues.[13] As Dr. Triana did not base his report on an accurate factual history, the case will be remanded to OWCP for further development of the medical evidence.

On remand OWCP should prepare an updated SOAF that includes appellant's dates of employment at the employing establishment and in nonfederal employment with accompanying noise exposure data. It should then obtain a rationalized opinion regarding whether his hearing loss was causally related to factors of his federal employment.

CONCLUSION

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

[10] *Id.*; *see also Y.D.*, Docket No. 17-0461 (issued July 11, 2017).

[11] *See S.T.*, Docket No. 18-1144 (issued August 9, 2019) (medical opinions based on an incomplete or inaccurate history are of limited probative value).

[12] *See D.M.*, Docket No. 19-1181 (issued December 2, 2019).

[13] *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Richard F. Williams*, 55 ECAB 343 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: March 23, 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