

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

C.H., Appellant)	
)	
and)	Docket No. 20-0849
)	Issued: January 29, 2021
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bangor, WA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 9, 2020 appellant filed a timely appeal from a February 13, 2020 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 binaural hearing loss causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On March 26, 2019 appellant, then a 63-year-old rigger, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss due to factors of his federal

¹ 5 U.S.C. § 8101 *et seq.*

employment. He noted that he first became aware of his hearing loss and its relationship to his federal employment on March 12, 2019.

In support of his claim, appellant provided a March 12, 2019 report from Jason Willard Danford, an audiologist, who upon testing noted moderate sensorineural at three kilohertz (kHz), mild-to-severe sensorineural hearing loss from four to eight kHz in the left ear and mild sloping to moderately severe sensorineural hearing loss from three to eight kHz in the right hear. Mr. Danford noted that appellant had worked for 31 years as a rigger and that he had reported occupational noise exposure from intermittent exposure to machinery and hammering. He advised that appellant utilized hand-formed earplugs for hearing protection. OWCP also received an audiogram report dated March 12, 2019 from Mr. Danford.

In an April 1, 2019 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary information. In a separate letter of even date, it requested that the employing establishment address the accuracy of his allegations and describe his workplace exposure to hazardous noise.

On April 16, 2019 appellant submitted a number of documents detailing his employment history in private and federal employment as an assistant logging yard hook tender choker setter from May 1976 through July 1979, as an assistant foreman from August 1979 through May 1981, as a foreman from June 1981 through January 1982, as an equipment operator from March through November 1982, as an equipment cleaner from November 1982 through July 1985, as commercial construction from March to November 1997, as a laborer from November 1997 to June 2000, as a school bus driver from September 2000 through June 2001, as a general contractor from June 2001 through January 2003, and as a rigger from June 2000 through the present. He worked as a rigger at the Puget Sound Naval Support from June 2000 through May 2009, at the U. S. Army Corps of Engineers from May 2009 through February 2014, and at the current employing establishment from February 2014 through the present.

In an undated employment history summary, appellant alleged that he was exposed to noise eight hours per day at the employing establishment worksite including noise from pressure washers, needle guns, sanders, grinders, deck crawlers, cranes, forklifts, carbon arc, diesel engines, chopping guns, etc. On April 11, 2019 he responded to OWCP's questions and noted that he had not previously filed a claim for a hearing loss.

On May 13, 2019 the employing establishment provided copies of appellant's yearly audiogram findings from October 10, 1982 through March 12, 2019.

OWCP referred appellant for a second opinion evaluation with Dr. Edward Treyve, a Board-certified otolaryngologist, in order to determine whether his work-related noise exposure was sufficient to have caused hearing loss, and if so, the extent and degree of appellant's hearing loss. In a report dated July 18, 2019, Dr. Treyve noted that he had reviewed the statement of accepted facts (SOAF), performed an audiological evaluation, and completed OWCP's evaluation questionnaire. He discussed appellant's medical records, including prior audiograms and noted normal hearing through 2014 in both ears when appellant began his current employment, with progressive high-frequency binaural loss since 2014. Dr. Treyve reported that physical

examination of appellant's ears revealed normal ear canals and tympanic membranes. He reviewed appellant's audiogram performed that day, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz) losses of 5, 20, 15, and 30 decibels (dBs) on the right, respectively and 10, 30, 25, and 40 dBs on the left, respectively. The audiogram was performed by an audiologist who documented timely calibration of testing equipment. Dr. Treyve diagnosed bilateral sensorineural hearing loss, which he believed was not employment related. He concluded that appellant's hearing loss was more likely due to the effects of presbycusis rather than due to any occupational noise exposure. In support of this conclusion, Dr. Treyve noted that appellant worked in a noisy environment from 1976 until 2014 wearing ear protection and that from 2014 to the present appellant has worked in his quietest work environment that he has experienced throughout his career. He related that while much of appellant's work history in and out of federal employment was in an environment of sufficient intensity and duration to have potentially contributed to hearing loss, it did not appear to have contributed based upon serial audiometry and the use of adequate ear protection. Dr. Treyve concluded that according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² appellant had zero percent monaural hearing loss in each ear and zero percent impairment for tinnitus. While he noted that binaural amplification would be recommended for appellant's hearing loss, the need for amplification was not related to occupational noise exposure.

By decision dated August 20, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed hearing loss and his work-related noise exposure. It based its finding upon the July 18, 2019 report of Dr. Treyve.

On September 9, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. In a letter dated September 5, 2019, appellant related that he disagreed with Dr. Treyve's opinion that his hearing loss was related to presbycusis as he had been exposed to hazardous noise in his private employment as well as his federal employment.

On December 2, 2019 the Branch of Hearings and Review vacated the August 20, 2019 decision, finding that Dr. Treyve's opinion was insufficient to carry the weight of the medical evidence. It therefore remanded the case to OWCP to obtain a supplemental opinion from Dr. Treyve.

OWCP prepared an updated statement of accepted facts on December 12, 2019 and in a letter dated December 12, 2019, it requested that Dr. Treyve review the SOAF and expand on his medical reasoning as to why appellant's federal employment did not contribute to appellant's hearing loss.

In a December 18, 2019 supplemental report, Dr. Treyve responded noting that he did not believe that appellant's bilateral hearing was related to occupational noise. He explained that while appellant worked in a noisy work environment for most of his work career, he had normal hearing through 2014, approximately 32 years after starting employment. Since 2014 appellant worked as a rigger in a workplace environment described as quiet enough for easy communication with

² A.M.A., *Guides* (6th ed. 2009).

coworkers, and he wore ear protection when necessary. Dr. Treyve advised that once noise exposure stops, the effects of noise exposure cease and do not progress. He explained that noise exposure effects typically occur in the early years of exposure, and as people age, the effects of presbycusis occur increasingly. For these reasons, Dr. Treyve concluded that appellant's hearing changes in the last five years was consistent with the effects presbycusis rather than noise exposure working in a quieter work environment than the previous employment. Additionally, the late occurrence of appellant's hearing loss and the audiometry results suggested presbycusis to be the cause rather than any noise exposure. Dr. Treyve explained that this conclusion was supported by the industrial audiograms on and after 2015, which showed high-frequency deterioration, and the July 18, 2019 audiogram.

By decision dated February 13, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed hearing loss and his work-related noise exposure. It based its finding upon Dr. Treyve's December 18, 2019 supplemental report.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷

³ *Supra* note 1.

⁴ *B.C.*, Docket No. 19-1983 (issued June 8, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *C.C.*, Docket No. 20-0151 (issued July 20, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *B.C.*, *supra* note 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).

⁷ *C.C.*, *supra* note 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.⁸ 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.

OWCP referred appellant to Dr. Treyve for a second opinion evaluation regarding his hearing loss claim. In a supplemental report dated December 18, 2019, he reviewed appellant's medical record and SOAF, related examination findings, and diagnosed bilateral sensorineural hearing loss. Dr. Treyve opined that appellant's hearing loss was related to presbycusis and not work exposure, noting that noise exposure effects typically occur during the early years of exposure. He noted that appellant did not have any hearing loss through 2014, and since 2014, he worked in a quieter environment. Dr. Treyve also explained that while the effects of noise exposure typically occur more in the earlier years of exposure, the effects of presbycusis occur more as individuals age. He concluded that the late occurrence of appellant's hearing loss and audiogram results were indicative of presbycusis as the cause of the hearing changes rather than any employment noise exposure.

Dr. Treyve advised that the effects of noise exposure cease after noise exposure stops and do not progress related to prior noise exposure. The Board has recognized that a claimant may be entitled to a schedule award for increased hearing loss, even after exposure to hazardous noise has ceased, if causal relationship is supported by the medical evidence of record.¹⁰ The Board has cautioned against a medical opinion providing a blanket unrationalized statement that hearing loss does not progress following the cessation of hazardous noise exposure.¹¹ Dr. Treyve also explained why appellant's hearing loss was due to presbycusis and not his federal employment exposure.

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. The Board therefore finds that Dr. Treyve's supplemental report dated

⁸ *B.C.*, *supra* note 4; *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *C.C.*, *supra* note 5; *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹⁰ *See E.C.*, Docket No. 19-1007 (issued November 8, 2019). *R.B.*, Docket No. 16-1863 (issued April 3, 2017).

¹¹ *E.C.*, *id.*; *E.R.*, Docket No. 16-1529 (issued March 3, 2017); *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

December 18, 2019 represents the weight of the medical evidence and establishes that appellant's sensorineural hearing loss was not due to exposure to noise in the federal workplace.

Appellant has not submitted medical evidence sufficient to overcome the weight accorded to Dr. Treyve or create a conflict. As the medical evidence of record is insufficient to establish sensorineural hearing loss causally related to the accepted factors of federal employment, the Board finds that appellant has not met his burden of proof.¹²

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 February 13, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 29, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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