



firearms instructor, and amplified earpieces used in both ears. He indicated that he first became aware of his condition on October 29, 2019 and first realized that his condition was caused or aggravated by his federal employment on November 8, 2019. Appellant did not stop work.

In an undated statement, appellant noted that he worked for the employing establishment as a firearms instructor beginning May 11, 2001. He indicated that he was exposed to occupational noise while participating in prolonged sessions to train employees on multiple weapon systems and was exposed to live gun fire and explosions in practical training environments. These exposures occurred five times per year for 32 hours per week or more, and the frequency had increased since 2001. Appellant alleged that he was also required to use amplified ear pieces in both ears to allow for radio communication with other detail members, which resulted in exposure to intermittent excessive noise levels for periods in excess of 12 hours per day for 45 days at a time. He contended that he was also exposed to jet engine noise during protective details. Appellant also confirmed that he did not have a history of any disease, illness, surgery, or trauma to his ears which would cause or contribute to his hearing loss.

In support of his claim, appellant provided an October 25, 2019 audiometric testing report from Christine Stokiosa, an audiologist, and an audiogram summary report detailing the results of hearing tests he underwent with the employing establishment between March 24, 1998 and October 29, 2019.

In a February 6, 2020 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. 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. It afforded both parties 30 days to submit the necessary information.

In a March 11, 2020 response to the hearing loss questionnaire, appellant indicated that he was a deputy marshal for the employing establishment from June 26, 1988 through May 11, 2001, during which time he was exposed to noise from firearms six hours per day, three days per year. From May 11, 2001 and ongoing, he worked as a firearms instructor, and was exposed to noise from firearms 32 hours per week, five times per year. In connection with each position, appellant was provided with earmuffs or plugs. He also asserted that he does not engage in any hobbies outside work that involve loud noise.

In a March 12, 2020 report, Harriet B. Jacobster, Au.D., an audiologist, noted that appellant related that he was exposed to occupational noise from guns, shotguns, rifles, jet engines, and radios. She diagnosed sensorineural hearing loss and tinnitus and opined that these conditions were directly related to noise exposure and acoustic trauma experienced in the course of his employment. Dr. Jacobster explained that appellant's exposure to firearms, which can have decibel (dB) levels as high as 165 dB, can damage the delicate structures of the inner ear over time causing noise-induced hearing loss. She noted that his audiograms since March 24, 1998 demonstrated a progression of findings consistent with bilateral noise-induced hearing loss. Dr. Jacobster further explained that her examination on March 10, 2020 was also consistent with bilateral elevated hearing thresholds consistent with excessive noise exposure.

On September 1, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), for a second opinion examination with Dr. Stephen Freifeld, a Board-certified otolaryngologist, in order to determine whether appellant's work-related noise exposure was sufficient to have caused hearing loss, and if so, the extent and degree of his hearing loss. In a report dated September 23, 2020, Dr. Freifeld noted his review of the SOAF, performed an audiological evaluation, and completed OWCP's evaluation questionnaire. He discussed appellant's medical records including prior audiograms, and reported that his physical examination revealed normal ear canals and tympanic membranes. Dr. Freifeld reviewed an audiogram performed that day, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz losses of 15, 25, 25, and 45 dBs in the left ear, respectively, and 15, 20, 25, and 30 dBs in the right, respectively. He diagnosed bilateral sensorineural hearing loss and mild subjective bilateral tinnitus, which he concluded was more likely due to the effects of presbycusis rather than due to any occupational noise exposure. Dr. Freifeld noted that appellant's exposures were intermittent in nature, and therefore much less damaging than chronic noise. He further indicated that appellant's exposures were made less intense by the use of appropriate ear protection. Dr. Freifeld noted that appellant reported ringing in his ears at times, which suggested that the hearing protection was not fully effective. However, that, if that were the case, he reported that it went away shortly thereafter which was indicative of a temporary threshold shift which would not directly impact his overall hearing. Dr. Freifeld explained that the configuration of hearing loss on the audiograms was not consistent with the type of hearing loss that occurs from chronic environmental noise exposure. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> he found that appellant had zero percent monaural hearing loss on the right and 3.8 percent monaural hearing loss on the left.

By decision dated October 28, 2020, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish that his diagnosed binaural hearing loss was causally related to the accepted workplace noise exposure.

### **LEGAL PRECEDENT**

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 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,<sup>4</sup> 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

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> *Supra* note 1.

<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).

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: (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 issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.<sup>9</sup>

### ANALYSIS

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

Appellant alleged that he developed binaural hearing loss due to noise exposure during the course of his federal employment. He noted that he was exposed to hazardous noise from firearms, explosives, jet engine noise, and amplified earpieces.

In a September 23, 2020 second opinion report, Dr. Freifeld diagnosed bilateral sensorineural hearing loss and mild subjective bilateral tinnitus, but concluded the conditions were more likely due to the effects of presbycusis rather than due to any occupational noise exposure. In support of this conclusion, he explained that appellant's exposures were intermittent in nature and therefore much less damaging than chronic noise. Dr. Freifeld opined that the exposures were made less intense by the use of appropriate ear protection, but acknowledged that appellant reported ringing in his ears at times, which suggested that the hearing protection was not fully effective. He opined that, if that were the case, he reported that it went away shortly thereafter which was indicative of a temporary threshold shift which would not directly impact his overall hearing.

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<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); *R.H.*, 59 ECAB 382 (2008).

<sup>8</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 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); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In a development letter dated February 6, 2020, OWCP requested that the employing establishment address the accuracy of appellant's allegations and describe his workplace exposure to hazardous noise. It specifically requested that the employing establishment provide detailed information, including dB level and frequency for each jobsite, the period of exposure including hours per day and days per week, and the type of ear protection provided. The employing establishment, however, did not respond to OWCP's February 6, 2020 development letter.

The Board finds that OWCP must further develop the factual aspect of this record. The record reflects that the information regarding the frequency, duration, and dB level of appellant's exposures to hazardous noise is incomplete and at times inconsistent. Accordingly, OWCP must develop this factual aspect of the case before a full and fair determination can be made regarding causal relationship.<sup>10</sup>

It is well established that, proceedings under FECA are not adversarial in nature and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.<sup>11</sup> OWCP has an obligation to see that justice is done.<sup>12</sup>

On remand it should obtain noise exposure data from the employing establishment and provide this information to Dr. Freifeld for a supplemental report.<sup>13</sup> Following this and other such development deemed necessary, OWCP shall issue a *de novo* decision in the case.

### CONCLUSION

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

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<sup>10</sup> See *J.V.*, Docket No. 17-0973 (issued July 19, 2018).

<sup>11</sup> See *D.O.*, Docket No. 20-0006 (issued September 9, 2020); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

<sup>12</sup> See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4, 2.800.7, 2.800.8, and 2.800.10 (June 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 28, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 19, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board