

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

D.O., Appellant	)	
	)	
and	)	<b>Docket No. 22-0557</b>
	)	<b>Issued: October 24, 2022</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>U.S. BORDER PATROL, Olmito, TX, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 5, 2022 appellant filed a timely appeal from a February 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 in the performance of duty, as alleged.

**FACTUAL HISTORY**

On December 27, 2021 appellant, then a 51-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he sustained binaural hearing loss due to

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

factors of his federal employment including exposure to hazardous noise during quarterly firearms qualifications at the firing range. He noted that he first became aware of his hearing loss on December 1, 2021 and first realized its relation to his federal employment on December 20, 2021. On the reverse side of the claim form, J.V., appellant's supervisor, indicated that appellant had last been exposed to the identified work factors on December 29, 2021.

On December 27, 2021 OWCP received a December 20, 2021 employing establishment audiogram bearing an illegible signature. The audiogram demonstrated losses of 95, 100, 100, and 95 decibels (dBs) on the right and 95, 100, 95, and 90 dBs on the left at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) respectively.

In a development letter dated January 5, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to respond. No response was received.

By decision dated February 7, 2022, OWCP denied appellant's hearing loss claim, finding that he had not established the implicated employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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>3</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 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, 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

---

<sup>2</sup> *Id.*

<sup>3</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</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>8</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>9</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 binaural hearing loss causally related to occupational exposure to hazardous noise during quarterly firearms qualification at a firing range.

OWCP, in its January 5, 2022 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. Appellant did not answer the questionnaire or otherwise provide additional factual information.

The Board finds that the factual evidence of record lacks sufficient detail to establish appellant's claim.<sup>10</sup> Appellant has not described, with adequate detail, the duration and circumstances of the alleged exposure to hazardous noise.

As the factual evidence of record is insufficient to establish appellant's claim, the Board finds that he has not met his burden of proof.<sup>11</sup>

---

<sup>6</sup> *J.J.*, Docket No. 17-0617 (issued September 26, 2019); *C.T.*, Docket No. 21-1026 (issued January 19, 2022); *R.G.*, Docket No. 19-0233 (issued July 16, 2019). See also *Roy L. Humphrey*, 57 ECAB 238, 241 (2005) *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>8</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *J.J.*, *supra* note 6; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> *J.J.*, *id.*

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.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 7, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2022  
Washington, DC

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

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

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