

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

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<b>V.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0799</b>
	)	<b>Issued: October 25, 2022</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD &amp;</b>	)	
<b>INTERMEDIATE MAINTENANCE FACILITY,</b>	)	
<b>Bremerton, WA, Employer</b>	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On April 28, 2022 appellant filed a timely appeal from a March 29, 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 causally related to the accepted factors of his federal employment.

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

## **FACTUAL HISTORY**

On June 1, 2021 appellant, then a 72-year-old engineering technician, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss due to factors of his federal employment. He indicated that he first became aware of his condition on December 7, 2007, and first realized that his condition was caused or aggravated by his federal employment on the same date. Appellant noted that his audiogram on the last day of employment showed hearing loss from exposure to noise. He retired on January 3, 2008.

In support of his claim, appellant submitted audiometric reports dated April 6 and 15, 2021. He also provided his employment history from October 8, 1971 to 1990, and employing establishment hearing conservation data with audiometric results from July 11, 2001 to December 7, 2007.

In a June 23, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him that a second opinion examination would be scheduled to address whether his employment activities/exposure caused, contributed, or aggravated the diagnosed condition.

On September 9, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), for a second opinion examination with Dr. Edward Treyve, a Board-certified otolaryngologist, to determine whether appellant's work-related noise exposure caused hearing loss and, if so, the extent and degree of hearing loss.

In a report dated September 30, 2021, Dr. Treyve noted his review of the SOAF, performed an audiological evaluation, and completed OWCP's evaluation questionnaire. He discussed appellant's occupational history, including noise exposure; and medical records, including prior audiograms. Dr. Treyve noted that appellant's hearing levels were normal in 1986, which was 15 years after the start of employment. He explained that appellant's hearing levels in the low and mid frequencies and were in excess of what would be predicted on the basis of presbycusis (age-related hearing loss). Dr. Treyve indicated that appellant's high-frequency hearing loss was consistent with the effects of presbycusis. He explained that appellant worked as a pipefitter with high levels of occupational noise exposure until 1981 and, thereafter, had no occupational noise exposure or very limited noise exposure of two to three hours per day at most, wearing ear protection and not using tools himself, which he did not believe was of sufficient intensity and duration to have contributed to hearing loss. Dr. Treyve noted that appellant's workplace noise exposure between 1971 and 1981 was potentially of significant intensity and duration to contribute to hearing loss, but there was no evidence of hearing loss on audiometry in 1986, and that he did not believe that appellant's occupational noise exposure after 1981 was of sufficient intensity and duration to have caused hearing loss. He reported that his physical examination revealed normal pinna bilaterally with normal ear canals and tympanic membranes, no effusion, perforation or retraction, and normal pneumatic otoscopy. Dr. Treyve reviewed an audiogram performed that day Elisabeth Went, an audiologist, using an audiometer last calibrated on July 13, 2021, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz), losses of 40, 45, 45, and 40 decibels (dBs) in the right ear, respectively, and 35, 35, 40 and 45 dBs in the left ear, respectively. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent*

*Impairment* (A.M.A., *Guides*),<sup>2</sup> Dr. Treyve found that appellant had monaural hearing impairment of 20.6 percent in the left ear and 26.3 percent in the right ear, or 21.6 percent binaural hearing impairment. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. Regarding the sensorineural hearing, Dr. Treyve opined that it was “in my opinion NOT DUE to noise exposure encountered in [appellant’s] Federal civilian employment.” (Emphasis in the original.) Regarding tinnitus, he opined, “[t]he tinnitus is, in part or all, in my opinion NOT DUE to noise exposure encountered in this [appellant’s] federal civilian employment.” (Emphasis in the original.) Dr. Treyve explained appellant had fairly flat sensorineural hearing loss, other than the high frequencies not affected by noise exposure, and that low and mid-frequency hearing loss was unrelated to occupational noise exposure and likely due to hereditary causes or Ménière’s syndrome, particularly with appellant’s history of episodic dizziness. He recommended binaural amplification and opined that, “In my opinion the need for amplification is not related to occupational noise exposure.” Dr. Treyve recommended otolaryngology follow up for appellant’s dizziness and hearing loss.

In a development letter dated October 29, 2021, OWCP notified appellant of the deficiencies in his claim. It explained that the second opinion physician did not opine that his hearing loss was due to his employment, and that it was providing appellant an opportunity to establish the fifth basic element, causal relationship. OWCP afforded appellant 30 days to submit the necessary evidence.

In a letter dated November 19, 2021, appellant disagreed that his hearing loss was not at least in part due to his exposure to occupational noise. He indicated that he worked in the federal civilian service from 1971 to 2008, and with the exception of nine years at the Mare Island Naval Shipyard, he was exposed to noise daily, and was enrolled in the hearing conservation program during his entire career. Appellant noted that Dr. Treyve found that his hearing loss was fairly flat and not consistent with noise-induced hearing loss; however, appellant noted that his 2007 audiogram showed his left ear hearing loss was better in the lower frequencies and worse in the high frequencies. He indicated that he believed that both of his ears were damaged by work-related noise exposure and requested medical benefits of hearing aids.

By decision dated December 2, 2021, 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.

On January 3, 2022 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review and submitted copies of his November 19, 2021 letter and his December 7, 2007 audiogram.

By decision dated March 29, 2022, OWCP’s hearing representative affirmed the December 2, 2021 decision. OWCP’s hearing representative explained that the evidence of record established that appellant had hearing loss; however, there was no medical evidence that appellant sustained work-related hearing loss.

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

## 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 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 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, to determine whether appellant's documented hearing loss was causally related to factors of his federal employment. In his September 30, 2021 report, Dr. Treyve diagnosed

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

<sup>4</sup> *See S.N.*, Docket No. 21-0258 (issued October 19, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<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).

bilateral sensorineural hearing loss and bilateral tinnitus. However, he opined that the sensorineural hearing loss was not due to noise exposure encountered in appellant's employment. Dr. Treyve also opined that appellant's tinnitus was not in part or all due to noise exposure encountered in this appellant's federal civilian employment. He recommended binaural amplification for appellant's hearing levels, but opined that appellant's need for amplification was not related to occupational noise exposure.

The Board notes that Dr. Treyve found that appellant's hearing levels in the low and mid frequencies and were in excess of what would be predicted on the basis of age-related hearing loss (presbycusis) and that appellant's high-frequency hearing loss was consistent with the effects of presbycusis. Dr. Treyve also explained that appellant worked as a pipefitter with high levels of occupational noise exposure until 1981; however, there was no evidence of hearing loss on audiometry in 1986 and, thereafter, appellant had no or very limited occupational noise exposure. He explained appellant had fairly flat sensorineural hearing loss, other than the high frequencies not affected by noise exposure, and that low and mid-frequency hearing loss was unrelated to occupational noise exposure and likely due to hereditary causes or Ménière's syndrome, particularly with appellant's history of episodic dizziness.

The Board has reviewed the opinion of Dr. Treyve and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the cause of appellant's hearing loss. Dr. Treyve provided a thorough factual and medical history and accurately summarized the relevant medical evidence.<sup>10</sup> He further provided medical rationale for his opinion by explaining that the nature of appellant's hearing loss did not support an employment-related cause.

In support of his claim, appellant provided copies of audiometric reports dated April 6 and 15, 2021, and the results of hearing tests he underwent with the employing establishment between July 11, 2001 and December 7, 2007. He argued that the hearing tests showed that his hearing loss was, at least in part, employment related. However, causal relationship is a medical issue that can only be established by probative medical opinion evidence.<sup>11</sup>

As appellant has not submitted rationalized medical evidence establishing hearing loss due to factors of his federal employment, the Board finds that he has not met his burden of proof.

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.

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<sup>10</sup> See *S.H.*, Docket No. 20-1633 (issued September 9, 2021); *J.W.*, Docket No. 18-0670 (issued September 11, 2018) (finding that a probative medical opinion must be based on a complete factual and medical background of the employee).

<sup>11</sup> *D.R.*, Docket No. 20-1570 (issued April 14, 2021); *R.H.*, Docket No. 18-1721 (issued March 25, 2019). See also *J.H.*, Docket No. 20-1414 (issued April 5, 2022); *A.T.*, Docket No. 18-1717 (issued May 10, 2019); *J.A.*, Docket No. 18-0882 (issued December 31, 2018); *James A. Long*, 40 ECAB 538 (1989).

**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 March 29, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 25, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board