

¹ 5 U.S.C. § 8101 *et seq.*

at the employing establishment. He also reported that he was around bombs and gunfire when he worked in Afghanistan. Appellant noted that he first became aware of his condition and first realized its relation to his federal employment on October 24, 2019.

Appellant submitted a notification of personnel action Standard Form 50 dated September 21, 2019 and a position description for a heavy mobile equipment mechanic.

In a March 31, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It requested additional factual and medical evidence 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 the accuracy of appellant's allegations and to describe his workplace exposure to hazardous noise. It afforded both parties 30 days to submit the requested information.

In an April 5, 2021 letter, B.S., a workforce manager at the employing establishment, controverted appellant's claim alleging that noise levels at appellant's building were well within Occupational Safety and Health Administration (OSHA) levels for noise. He included a memorandum of noise level data, which indicated that the noise level at Building 345 was 87.4 to 75.3 decibels in February 2020. B.S. also noted that the employing establishment required the use of hearing protection at all times.

OWCP received examination notes dated October 24 and November 20, 2019 by Loren Roberts, a hearing conservation technician, who indicated that appellant was evaluated for a follow-up audiogram following a failed hearing screening.

In a completed questionnaire dated April 8, 2021, appellant indicated that he had never previously filed a claim for workers' compensation for hearing loss, and that he was still being exposed to hazardous noise at work. He reported that beginning in 2007, he worked as a mechanic at the employing establishment and was exposed to shop noise, power tools, and forklift noise. Appellant noted that hearing protection was required when using the drill. He also indicated that he was exposed to noise from bombs and gunfire when he worked in Afghanistan.

On August 26, 2021 OWCP referred appellant, along with a statement of accepted facts (SOAF), for a second opinion examination with Dr. Charles Hollingsworth, 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.² In a report dated September 21, 2021, Dr. Hollingsworth indicated that appellant had worked at the employing establishment for 14½ years and that there were no audiograms from the time of initial employment. He explained that he could not compare appellant's hearing at the time of his initial evaluation with the current audiogram. Dr. Hollingsworth diagnosed right moderate low frequency, moderate-to-severe mid frequency, and severe high-frequency sensorineural hearing loss. He indicated that he could not answer whether appellant's hearing loss was due to workplace noise exposure at the employing establishment.

² On September 21, 2014 Thomas D. Burns, an audiologist, performed audiometric testing.

The employing establishment provided an audiogram dated November 17, 2014.

In an October 27, 2021 letter, OWCP requested clarification from Dr. Hollingsworth regarding whether appellant's hearing loss was causally related to his workplace noise exposure.

In a letter dated December 13, 2021, Dr. Hollingsworth indicated that there were no audiograms from the time of appellant's initial employment for him to review. He reported that it was improper to assume that appellant entered federal employment with normal hearing, and that appellant may have already had established hearing loss before starting work.

In a letter dated February 11, 2022, OWCP requested that the employing establishment provide any audiograms for appellant prior to 2014.

The employing establishment provided audiograms dated October 24 and November 20, 2019.

On February 22, 2022 appellant provided OWCP with a detailed list of his employment history. He noted that his hobbies included shooting pool. Appellant explained that he first realized that his hearing loss was work related during a hearing test at the employing establishment.

OWCP received a report dated October 24, 2019 by Mr. Roberts who indicated that appellant was showing a threshold shift in hearing loss. Mr. Roberts recommended that appellant be removed from any area with noise in excess of 75dBA for 14 hours.

In a May 26, 2022 letter, OWCP requested that Dr. Hollingsworth review the updated SOAF and additional medical evidence and provide an opinion regarding whether appellant's hearing loss was causally related to his workplace noise exposure.

In an email dated June 6, 2022, the medical scheduler informed OWCP that Dr. Hollingsworth was no longer accepting workers' compensation cases and had refused to complete a supplemental report.

OWCP subsequently referred appellant, along with an updated SOAF, for a second opinion examination with Dr. Paul Donald Whitt, 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 July 12, 2022, Dr. Whitt noted his review of the SOAF, performed an audiological evaluation, and completed OWCP's evaluation questionnaire. He indicated that appellant had a long history of progressive hearing loss. Dr. Whitt reported that appellant had noise exposure, but not unprotected noise exposure. On physical examination, he observed normal ear canals and tympanic membrane. Dr. Whitt reviewed an audiogram performed that day by Monica Gilliam, an audiologist, using an audiometer last calibrated on December 1, 2021, which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz), losses of 60, 60, 55, and 65 decibels (dBs) in the right ear, and 55, 55, 55, and 55 dBs in the left ear, respectively. He diagnosed bilateral sensorineural hearing loss and indicated that this was "progressive genetic hearing loss rather than noise exposure."

In response to OWCP's questions, Dr. Whitt indicated that appellant had minimal hearing loss at the beginning of his employment and noted that appellant's hearing loss was much worse today. He opined that appellant's exposure at work was not a factor. Dr. Whitt checked a box indicating that appellant's bilateral hearing loss was "Not Due" to workplace noise exposure and provided medical rationale of "shape of audio." He also reported that appellant had moderate tinnitus with minimal effect on activities of daily living, and checked a box indicating it was also "Not Due" to workplace noise exposure.

By decision dated September 8, 2022, 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 FECA³ 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,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

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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

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 employee, must be one of reasonable medical

³ *Id.*

⁴ *D.D.*, Docket No. 19-1715 (issued December 3, 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 *Y.G.*, Docket No. 20-0688 (issued November 13, 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 *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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 *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

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

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.⁹

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 his federal employment. He noted that he was exposed to hazardous noise from shop noise, power tools, and forklifts, and from bombs and gunfire when he worked in Afghanistan.

In a development letter dated March 31, 2021, 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 job site, the period of exposure including hours per day and days per week, and the type of ear protection provided. Although the employing establishment submitted an April 5, 2021 letter challenging appellant's claim, it did not provide the detailed information requested by OWCP. Furthermore, OWCP also requested in a February 11, 2022 letter that the employing establishment provide any audiograms prior to 2014 for appellant. The employing establishment, however, did not respond to OWCP's February 11, 2022 letter and did not provide audiograms prior to 2014.

Accordingly, 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 and the degree of appellant's hearing loss prior to his federal employment is incomplete. Moreover, the employing establishment should provide any relevant information that is normally in its exclusive control. Accordingly, OWCP must develop this factual aspect of the case before a full and fair determination can be made regarding causal relationship.¹⁰

It is well established that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter.¹¹ While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹² Accordingly, once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues

⁹ *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 S.N.*, Docket No. 21-0258 (issued October 19, 2021); *see also J.V.*, Docket No. 17-0973 (issued July 19, 2018).

¹¹ *N.L.*, Docket No. 19-1592 (issued March 12, 2020); *M.T.*, Docket No. 19-0373 (issued August 22, 2019); *B.A.*, Docket No. 17-1360 (issued January 10, 2018); *Clinton E. Anthony, Jr.*, 49 ECAB 476 (1998).

¹² *C.L.*, Docket No. 20-1631 (issued December 8, 2021); *L.B.*, Docket No. 19-0432 (issued July 23, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

in the case.¹³ The Board finds, therefore, that the case must be remanded to OWCP. On remand, OWCP should obtain noise exposure data and reference audiograms prior to 2014 from the employing establishment and provide this information to Dr. Whitt for a supplemental report. 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.

ORDER

IT IS HEREBY ORDERED THAT the September 8, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 1, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹³ *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).