

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

including 20 years of exposure to loud noise during mandatory firearms training with the employing establishment. He noted that he first became aware of his condition and realized its relation to his federal employment on May 20, 2023. Appellant did not stop work.

OWCP received a copy of the position description for appellant's special agent position, an employing establishment memorandum regarding firearms noise exposure, and noise attenuation data for his hearing protection device.

In a May 20, 2023 letter, the employing establishment hearing conservation team advised appellant that audiograms between November 22, 2002 and May 10, 2023 had detected a threshold shift in the hearing in his right ear.

OWCP also received an audiogram dated June 14, 2023.

In a development letter dated June 15, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. In a separate letter of even date, OWCP requested factual evidence from the employing establishment, including a description of any sources of noise exposure, the decibel and frequency level at the site, the duration of exposure, and all audiograms. It afforded both parties 60 days to submit the requested information.

In a June 19, 2023 response to OWCP's development questionnaire, appellant advised that he had worked as a special agent for the employing establishment since July 27, 2003. He related that he was exposed to loud noise from quarterly mandatory firearms trainings, which included firing hundreds of rounds of ammunition through a pistol, shotgun, and carbine rifle. Appellant was also exposed to noise during crisis negotiation trainings from 2007 through 2017, which included loud noises broadcast over bullhorns and the detonation of explosive devices. He related that he utilized hearing protection issued by the employing establishment, and that he was made aware of his hearing loss *via* correspondence dated May 20, 2023 following an audiogram.

In a June 20, 2023 letter, the employing establishment confirmed that appellant's job duties included use of firearms.

On July 28, 2023 OWCP referred appellant, along with a statement of accepted facts (SOAF), and copy of the medical record to Dr. Stan Phillips, a Board-certified otolaryngologist, for a second opinion evaluation.

Audiological testing performed on August 18, 2023 at the frequencies of 500, 1,000, 2,000, 3,000, and 4,000 Hertz (Hz) revealed losses of 10, 10, 15, 20, and 15 decibels (dBs) for the right ear, and losses of 10, 15, 10, 15, and 5 dBs for the left ear, respectively.

In an August 18, 2023 report, Dr. Phillips noted that appellant related that he had noticed the television was louder than usual and that he had to ask people to repeat themselves, which appellant attributed to his occupational exposure to noise from firearms. On physical examination, he noted normal ear canals and eardrums. Dr. Phillips indicated that the August 18, 2023 audiogram revealed "normal thresholds at all frequencies. 20dB at [3,000] on right. [One hundred percent] auditory discrimination bilaterally." He diagnosed sensorineural hearing loss resulting from noise exposure at work and noted that appellant had a 10 dB change in his right ear at 3,000

Hz and 4,000 Hz when compared to an audiogram “at the beginning of exposure.” Dr. Phillips found that “there appears to be ample evidence of hearing loss” and that appellant “showed signs of a threshold shift from baseline on his employee hearing summary.” He opined that his hearing difficulties were “more than likely due to excessive exposure to rounds fired using only one layer of hearing protection,” and noted that his difficulty with background noise would be unexpected for his age. In applying OWCP’s standardized procedures to calculate hearing loss based on the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>2</sup> Dr. Phillips determined that appellant had zero percent hearing impairment.

On September 7, 2023 Dr. Jeffrey M. Israel, a Board-certified otolaryngologist serving as a district medical adviser (DMA), noted that the earliest audiometric data from November 22, 2002 and the most recent audiogram from August 18, 2023 showed normal hearing in both ears. He found that the audiometric test results were valid and opined that the patterns were suggestive of no hearing loss.

By decision dated October 13, 2023, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment exposure. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

### **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

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

<sup>3</sup> *Id.*

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</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>6</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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>7</sup>

The medical evidence required to establish a causal relationship between a claimed specific condition and an employment incident 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 the specific employment factors identified by the claimant.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted employment exposure.

In an August 18, 2023 report, Dr. Phillips noted that appellant related that he had noticed the television was louder than usual and that he had to ask people to repeat themselves, which he attributed to his occupational exposure to noise from firearms. On physical examination, he noted normal ear canals and eardrums. Dr. Phillips indicated that the August 18, 2023 audiogram revealed “normal thresholds at all frequencies. [Twenty decibels] at [3,000] on right. [One hundred percent] auditory discrimination bilaterally.” He diagnosed sensorineural hearing loss resulting from noise exposure at work and noted that appellant had a 10 dB change in his right ear at 3,000 Hz and 4,000 Hz when compared to an audiogram “at the beginning of exposure.” Dr. Phillips found that “there appears to be ample evidence of hearing loss” and that appellant “showed signs of a threshold shift from baseline on his employee hearing summary.” He opined that his hearing difficulties were “more than likely due to excessive exposure to rounds fired using only one layer of hearing protection,” and noted that his difficulty with background noise would be unexpected for his age.

As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.<sup>10</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>7</sup> *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).

<sup>8</sup> *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *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).

<sup>10</sup> See *S.R.*, Docket No. 22-0453 (issued March 2, 2023); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

**CONCLUSION**

The Board finds that appellant has met his burden of proof to establish a diagnosed medical condition in connection with the accepted employment exposure.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 13, 2023 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 21, 2024  
Washington, DC

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

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

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