

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

T.G., Appellant)
and) Docket No. 25-0712
DEPARTMENT OF LABOR, MINE SAFETY &)
HEALTH ADMINISTRATION,) Issued: August 15, 2025
Madisonville, KY, Employer)

)

Appearances:

Elizabeth Ashley Bruce, Esq., for the appellant¹
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 July 21, 2025 appellant, through counsel, filed a timely appeal from a February 7, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish hearing loss causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On September 26, 2023 appellant, then a 63-year-old mine inspector, filed an occupational disease claim (Form CA-2) alleging that he sustained hearing loss causally related to factors of his federal employment including inspecting coal mines known to have loud equipment and machinery. He noted that he first became aware of his condition on March 4, 2007, and realized its relation to his federal employment on September 21, 2023.

In a development letter dated October 6, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations, including information about his noise exposure and the type of hearing protection provided. OWCP afforded the employing establishment 30 days to respond.

In a response received on October 16, 2023, the employing establishment provided a position description and a listing of audio testing results dated January 24, 2007 through August 8, 2023. It noted that it had provided appellant with hearing protection. Also received was a September 21, 2023 medical surveillance audiogram.

OWCP also received a supplemental statement from appellant on October 16, 2023, wherein he related that he had worked since 1979, and since March 2007 inspected coal mines throughout Kentucky, Indiana, and Illinois. Appellant recounted that he was exposed to noise from continuous mining machines, roof bolters, shuttle cars, conveyor belts, diesel equipment, ventilation fans, electric pumps and motors, rotary breakers, prep plants, drag lines, and slopes.

On January 18, 2024 OWCP referred appellant, together with the case record, a series of questions, and a statement of accepted facts (SOAF), to Dr. Mark Williams, a Board-certified otolaryngologist, for a second opinion evaluation.

In a report dated January 30, 2024, Dr. Williams recounted appellant's history of injury, provided physical examination findings, reviewed a January 30, 2024 audiogram, and diagnosed bilateral sensorineural hearing loss and tinnitus. He noted that appellant began federal employment in 2007. Dr. Williams opined that appellant's hearing loss was not due to workplace noise exposure, but was more consistent with presbycusis. In support of this conclusion, he explained that the pattern of hearing loss, *e.g.*, a sloping high frequency sensorineural hearing loss, was more consistent with presbycusis and the progression did not seem in excess of what would be expected based on presbycusis. Dr. Williams reviewed an audiogram conducted by an audiologist on the same date and calculated 23.4 percent permanent impairment due to binaural hearing loss and an additional 1 percent permanent impairment for tinnitus.

By decision dated March 22, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that appellant's hearing loss was causally related to the accepted employment factors.

On March 28, 2024 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 2, 2024.

By decision dated September 5, 2024, OWCP's hearing representative affirmed the March 22, 2024 decision.

On February 6, 2025 appellant, through counsel, requested reconsideration. In support of his request appellant submitted progress notes and an audiogram dated January 16, 2025 from Dr. William A. Logan, a Board-certified otolaryngologist. Dr. Logan recounted appellant's history of injury, conducted a physical examination, and reviewed medical evidence including Dr. Williams' report. He concluded that review of appellant's employment audiograms demonstrated a progression of high-pitched hearing loss during his employment. Dr. Logan diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. He opined that appellant's bilateral sensorineural hearing loss was due in part to his occupational exposure with the employing establishment. Dr. Logan reviewed an audiogram conducted by an audiologist on the same date and calculated seven percent permanent impairment due to binaural hearing loss. On February 6, 2025 OWCP also received a January 20, 2025 letter from Dr. Logan wherein he again concluded that appellant's sensorineural hearing loss was due at least in part to employment exposure while employed at the employing establishment.

By decision dated February 7, 2025, OWCP denied modification.

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 filed within the applicable time limitation period of FECA,⁴ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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

In an occupational disease claim, appellant's burden of proof requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or

³ *Supra* note 1.

⁴ *A.M.*, Docket No. 25-0386 (issued April 18, 2025); *S.M.*, Docket No. 21-0937 (issued December 21, 2021); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *A.M.*, *id.*; *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 *Supra* note 4.;

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 employee.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 claimant, 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.⁹

Section 8123(a) provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.¹⁰ The implementing regulations provide that in situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner (IME) for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.¹¹

ANALYSIS

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

OWCP referred appellant to Dr. Williams for a second opinion 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 that hearing loss. In his report dated January 30, 2024, Dr. Williams diagnosed bilateral sensorineural hearing loss and tinnitus, which he opined that it was not due to noise exposure encountered in the workplace. He opined that the pattern of hearing loss was more consistent with presbycusis.

In progress notes dated January 16, 2025, Dr. Logan, an examining physician, recounted an injury history, examined appellant's ears and reviewed audiograms and Dr. Williams' report. He diagnosed bilateral sensorineural hearing loss and bilateral tinnitus. Dr. Logan noted a review of employment audiograms supplied by appellant showed a progression of hearing loss during his

⁷ *A.M.*, *id.*; *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁸ *A.M.*, *id.*; *K.R.*, Docket No. 21-0822 (issued June 28, 2022); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

⁹ *A.M.*, *id.*; *G.S.*, Docket No. 22-0036 (issued June 29, 2022); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹⁰ 5 U.S.C. § 8123(a); *see A.M.*, *id.*; *C.C.*, Docket No. 20-0151 (issued July 30, 2020); *M.G.*, Docket No. 19-1627 (issued April 17, 2020); *R.C.*, Docket No. 12-0437 (issued October 23, 2012).

¹¹ 20 C.F.R. § 10.321. *See also A.M.*, *id.*; *J.H.*, Docket No. 22-0981 (issued October 30, 2023); *N.D.*, Docket No. 21-1134 (issued July 13, 2022); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001); *James P. Roberts*, 31 ECAB 1010 (1980).

employment. He opined that appellant's bilateral sensorineural hearing loss was due in part to his occupational exposure with the employing establishment.

Therefore, in accordance with section 8123(a) of FECA, the case must be remanded for referral to an IME for resolution of the conflict in the medical opinion evidence regarding the cause of appellant's hearing loss.¹² After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the February 7, 2025 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: August 15, 2025
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

¹² *Id.*