

)	
A.G., Appellant)	
)	
and)	Docket No. 25-0741
)	Issued: August 28, 2025
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, Laredo, TX, Employer)	
)	

Case Submitted on the Record

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

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On September 7, 2023 appellant, then a 54-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that he developed hearing loss and nerve damage in both ears due to factors of his federal employment, including noise exposure from firearms training, barking dogs, traffic, and air horns. He noted that he first became aware of his condition on August 1, 2014 and realized its relation to his federal employment on August 10, 2023. Appellant did not stop work. OWCP accepted the claim for bilateral sensorineural hearing loss and bilateral tinnitus.

In a medical report dated April 2, 2024, Jaziel I. Silva-Gonzalez, Au.D., an audiologist, indicated that appellant related complaints of vertigo, unsteadiness, and light-headedness. On examination, he observed normal otoscopy and type A tympanograms, mild high frequency sensorineural hearing loss, normal cochlear function, and upward gaze abnormality. In a summary of electrophysiological testing and a narrative medical report of even date, Dr. Silva-Gonzalez indicated that appellant's symptoms suggested several possible disorders, including bilateral posterior canal benign paroxysmal vertigo (BPPV), vestibular migraine, and MdDS. He recommended repositioning maneuvers, a migraine evaluation, a neurology consult, sensory integration therapeutic activities, and vestibular therapy. Dr. Silva-Gonzalez noted that exposure to noise can have adverse effects on hearing and balance mechanisms and that those with noise-induced hearing loss often suffer from balance disorders such as dizziness, vertigo, and spontaneous nystagmus. He opined that "the patient's symptoms/disorders are at least as likely as not caused by his direct employment history with the [employing establishment] caused by exposure to excessive noise trauma."

OWCP thereafter received an undated summary of electrophysiological testing by Dr. Silva-Gonzalez, who indicated that positional testing for BPPV was negative. He also indicated that during a follow-up call, appellant reported that his vertigo episodes had ceased.

In a July 30, 2024 report, Dr. Silva-Gonzalez noted appellant's audiogram results and recommended a consultation with an otolaryngologist to rule out possible MdDS.

In a narrative letter dated August 12, 2024, Dr. Silva-Gonzalez noted that appellant's history, symptomatology, and peripheral vestibular findings were suggestive of MdDS. He indicated that the symptoms of chronic swaying and light-headedness warranted a neurologic consultation.

On January 14, 2025 OWCP referred appellant, the medical record, and a statement of accepted facts (SOAF) to Dr. Walter Werchan, a Board-certified neurologist, for a second opinion evaluation regarding the nature and extent of appellant's August 1, 2014 employment injury.

In a January 22, 2025 report, Dr. Werchan noted appellant's history of exposure to occupational noise, his review of the medical record and SOAF, and appellant's complaints of hearing loss, tinnitus, vertigo, headaches, light sensitivity, nausea, and sensations of being on a boat, spinning, or bull riding. He performed a neurological examination, which was normal. Dr. Werchan explained that appellant had not been diagnosed with MdDS. He indicated that appellant's clinical history did not fit well with a diagnosis of MdDS or vestibular migraines,

noting that MdDS was a condition of chronic dizziness after disembarking a long flight or boat ride, which was not appellant's case. Dr. Werchan also noted that his headaches did not meet the international classification of headache disorders criteria for migraine or vestibular migraines. He opined that appellant had ongoing active residuals of the accepted conditions of binaural sensory hearing loss and bilateral tinnitus.

On May 22, 2025 OWCP routed the medical evidence of record, including Dr. Werchan's January 22, 2025 report and an updated SOAF, to Dr. Franklin M. Epstein, a Board-certified neurosurgeon serving as an OWCP district medical adviser (DMA), for review.

In a May 30, 2025 report, Dr. Epstein reviewed appellant's history, the medical record, and SOAF. He noted that MdDS is a very rare and poorly understood disorder of the central nervous system, which is spontaneous and of unknown pathophysiology, and is manifested by a sense of continued swaying or rocking after prolonged travel in a ship, plane, or automobile. Dr. Epstein also noted that appellant had age-appropriate vestibular dysfunction, which was a known source of lightheadedness, disequilibrium, and vertigo during middle age. He indicated that inner ear vestibular dysfunction was likely producing his reported symptoms and noted that MdDS was not provoked by prolonged loud noise exposure. Dr. Epstein recommended that the diagnosis of MdDS not be authorized as a consequential condition for appellant's August 1, 2014 claim.

By decision dated June 25, 2025, OWCP denied expansion of the acceptance of appellant's claim to include MdDS as causally related to, or consequential to, the accepted August 1, 2014 employment injury.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.² When an injury arises in the course of employment, every natural consequence that flows from that injury likewise arises out of the employment, unless it is the result of an independent intervening cause attributable to the claimant's own intentional misconduct.³ Thus, a subsequent injury, be it an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.⁴

To establish causal relationship between a specific condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence.⁵ 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

² *M.M.*, Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

³ *See J.M.*, Docket No. 19-1926 (issued March 19, 2021); *I.S.*, Docket No. 19-1461 (issued April 30, 2020); *see also Charles W. Downey*, 54 ECAB 421 (2003).

⁴ *J.M.*, *id.*; *Susanne W. Underwood (Randall L. Underwood)*, 53 ECAB 139, 141 n.7 (2001).

⁵ *See V.A.*, Docket No. 21-1023 (issued March 6, 2023); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁶

ANALYSIS

The Board finds that appellant has not met his burden of proof to expand the acceptance of his claim to include MdDS as causally related to, or consequential to, his accepted August 1, 2014 employment injury.

In support of his expansion claim, appellant submitted medical reports dated April 2, July 30, and August 12, 2024 and an undated electrophysiologic testing report by Dr. Silva-Gonzalez, an audiologist. The Board notes that audiologists are not considered physicians as defined under FECA.⁷ Therefore, Dr. Silva-Gonzalez' opinions are of no probative medical value and are insufficient to establish appellant's expansion claim.⁸

In a January 22, 2025 report, Dr. Werchan noted appellant's history of exposure to occupational noise, his review of the medical record and SOAF, and appellant's complaints of hearing loss, tinnitus, vertigo, headaches, light sensitivity, nausea, and sensations of being on a boat, spinning, or bull riding. He performed a neurological examination, which was normal. Dr. Werchan explained that appellant had not been diagnosed with MdDS. He indicated that appellant's clinical history did not fit well with a diagnosis of MdDS or vestibular migraines, noting that MdDS was a condition of chronic dizziness after disembarking a long flight or boat ride, which was not appellant's case. He also noted that his headaches did not meet the international classification of headache disorders criteria for migraine or vestibular migraines. Dr. Werchan opined that appellant had ongoing active residuals of the accepted conditions of binaural sensory hearing loss and bilateral tinnitus. In a May 30, 2025 report, Dr. Epstein, OWCP's DMA, concurred with Dr. Werchan. The Board finds that Dr. Werchan's report is well-reasoned and based on a complete and accurate history and, therefore, constitutes the weight of the medical evidence.⁹

As the medical evidence of record is insufficient to establish expansion of the acceptance of the claim to include MdDS as causally related to, or consequential to, appellant's accepted August 1, 2014 employment injury, the Board finds that he has not met his burden of proof.

⁶ *E.P.*, Docket No. 20-0272 (issued December 19, 2022); *I.J.*, 59 ECAB 408 (2008).

⁷ Section 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8102(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (May 2023). See also *David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under the FECA); *S.E.*, Docket No. 17-1601 (issued January 19, 2018) (audiologists are not included among the healthcare professionals defined as a physician under FECA); *Leon Thomas*, 52 ECAB 202 (2001) (an audiologist is not a physician under FECA).

⁸ See *S.E.*, *id.*; *Leon Thomas*, *id.*

⁹ See *P.N.*, Docket No. 22-0794 (issued October 20, 2023).

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 met his burden of proof to expand the acceptance of his claim to include MdDS as causally related to, or consequential to, his accepted August 1, 2014 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2025 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 28, 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