

(2) whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 5, 2024, appellant, then a 64-year-old painter, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral hearing loss due to factors of his federal employment, including prolonged exposure to hazardous noise. He noted that he first became aware of his condition and realized its relation to his federal employment on April 11, 2001. Appellant did not stop work.

In support of his claim, appellant submitted a statement describing his exposure to noise during his military service as a rocket launcher for two hours per day from September 1979 through October 1982. He was provided ear protection. Appellant explained that he had worked for the employing establishment as a painter since September 1983 and was exposed to hazardous noise, including noise from various pneumatic tools, six hours per day. He noted that earplugs and earmuffs were provided as protection, and he engaged in no hobbies which involved exposure to loud noise.

OWCP also received an official position description for a painter, and hearing conservation data reflecting a December 22, 2022 audiogram with a May 6, 2003 reference audiogram for comparison.

In a January 17, 2024 development letter, 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. OWCP afforded appellant 60 days to submit the necessary evidence. By separate development letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's claim. OWCP afforded the employing establishment 30 days to respond.

In support of his claim, appellant submitted a series of employing establishment noise dosimetry results and audiograms performed as part of a hearing conservation program, dated October 10, 1984 through January 29, 2024. The audiology findings reflected that appellant was notified of a permanent change in his hearing on December 16, 1996, and May 6, 2023, and that the most recent audiometric thresholds on January 29, 2024 revealed a hearing loss that was in excess of what would be normally predicted on the basis of presbycusis.

Following development of the claim, on April 3, 2024 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Marci E. Lait, a Board-certified otolaryngologist, for an audiogram and second opinion examination on May 2, 2024 to determine the nature, extent, and causal relationship of appellant's hearing loss.

In a May 2, 2024 report, Dr. Lait noted her review of the SOAF, performed an audiologic evaluation, and completed OWCP's questionnaire. She obtained audiology testing, which revealed the following losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 50, 70, 80, and 105 decibels (dBs) for the right ear and 80, 105, 100, and no response dBs for the left ear, respectively. Dr. Lait diagnosed bilateral sensorineural hearing loss and tinnitus. She opined that the

occupational noise exposure was of sufficient intensity to cause appellant's hearing loss, but did not attribute his hearing loss to his federal employment, noting that it remained unknown whether appellant had definitive permanent hearing loss. Dr. Lait reported that there was extreme variability in appellant's hearing in both ears that did not necessarily follow a particular pattern and that his audiometric testing prior to and during the visit suggested some degree of malingering. She stated that the significant differences between pure tone thresholds and speech audiometry and speech perception could not be accounted for by tinnitus, and that there was no definite evidence of permanent hearing loss. Dr. Lait advised that she was unable to determine if appellant had a medical condition causing fluctuation or if the variation was due to tertiary gain or malingering. She stated that she was "less inclined to believe" that appellant's hearing was fluctuating and that his tinnitus may be influencing his audiologic responses. Dr. Lait diagnosed malingering *versus* neurological/intellectual/functional disorder and opined that appellant's bilateral sensorineural hearing loss and tinnitus were not due to his hazardous federal employment exposure as there was no definite evidence of permanent hearing loss. She further recommended that appellant undergo physiologic testing, including an Auditory Brainstem Response (ABR), neurologic and/or neuropsychologic testing, and possible involvement from a forensic audiologist.

By decision dated May 15, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish hearing loss causally related to the accepted employment exposure. It accorded the weight of the medical evidence to Dr. Lait, the second opinion physician.

On June 14, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

Following a preliminary review, by decision dated August 14, 2024, OWCP's hearing representative vacated the May 15, 2024 decision, finding that the claim required further development of the medical evidence. The hearing representative noted that despite recommending additional medical evaluation to resolve the issue in the claim, OWCP did not arrange for any. The hearing representative remanded the case for further development to include a physiologic examination from a neuropsychologist and performance of an ABR test, to be followed by a *de novo* decision.

On November 6, 2024, OWCP referred appellant for diagnostic testing scheduled on November 21, 2024 with a licensed audiologist.

In a November 21, 2024 neurodiagnostic ABR test, Allison Reynolds, an audiologist, reported that appellant's test results were consistent with normal neurodiagnostic auditory brainstem response, bilaterally.

OWCP subsequently requested a supplemental opinion from Dr. Lait.

In a May 7, 2025 supplemental report, Dr. Lait referenced her prior attached report where she had suggested an objective test to validate appellant's subjective pure tone audiogram. Given that the attached auditory brainstem report was normal, she stood by her initial findings that appellant's hearing problem was not due to his noise exposure although his tinnitus might be.

By *de novo* decision dated May 22, 2025, OWCP denied appellant's occupational disease claim, finding that the medical evidence was insufficient to establish hearing loss causally related

to the accepted employment exposure. It accorded the weight of the medical opinion evidence to Dr. Lait.

On July 28, 2025, appellant requested reconsideration and submitted additional evidence, including a May 27, 2022 audiogram.

By decision dated August 14, 2025, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

LEGAL PRECEDENT -- ISSUE 1

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, an employee must submit the following: (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 employee.⁷

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.⁸ A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.⁹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

³ *Supra* note 1.

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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).

⁵ *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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).

⁶ *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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).

⁷ *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *see also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *S.M.*, Docket No. 22-0075 (issued May 6, 2022); *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).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁰

ANALYSIS -- ISSUE 1

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

In her May 2, 2024 report, Dr. Lait, the second opinion physician, diagnosed bilateral sensorineural hearing loss and tinnitus. She opined that the occupational noise exposure was of sufficient intensity to cause appellant's hearing loss, but did not attribute his hearing loss to his federal employment. Dr. Lait further diagnosed malingering *versus* neurological/intellectual/functional disorder and recommended additional medical evaluation as it remained unknown whether appellant had definitive permanent hearing loss. In a May 7, 2025 supplemental report, she reviewed the results of the November 21, 2024 neurodiagnostic ABR test, referenced her prior attached report and opined that, given that the auditory brainstem report was normal, she stood by her initial findings that appellant's hearing problem was not due to his noise exposure although his tinnitus might be. However, Dr. Lait's opinion was insufficiently rationalized.¹¹ She did not sufficiently explain whether appellant's accepted employment exposure caused or contributed to appellant's hearing loss and/or tinnitus. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain sufficient medical rationale explaining how a given medical condition/disability was causally related to the accepted employment factors.¹² Dr. Lait's May 2, 2024 and May 7, 2025 reports are therefore insufficient to carry the weight of the medical evidence.¹³

The Board notes that proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁴ Once it undertakes development of the record, it has an obligation to do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹⁵ As Dr. Lait's May 2, 2024 and May 7, 2025 reports lack rationale, OWCP failed to resolve the issue in the case.¹⁶

The case shall therefore be remanded for further development. On remand, OWCP shall refer the case record and SOAF to a new specialist in the appropriate field of medicine for a fully-

¹⁰ *J.D.*, Docket No. 22-0935 (issued December 16, 2022); *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, *supra* note 7.

¹¹ *See T.P.*, Docket No. 25-0381 (issued April 11, 2025); *J.S.*, Docket No. 25-0051 (issued November 20, 2024); *D.V.*, Docket No. 16-1853 (issued April 14, 2017).

¹² *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

¹³ *See B.C.*, Docket No. 25-0643 (issued August 20, 2025).

¹⁴ *T.N.*, Docket No. 25-0366 (issued April 11, 2025); *S.R.*, Docket No. 24-0880 (issued October 31, 2024); *K.B.*, Docket No. 23-0272 (issued October 26, 2023); *see E.W.*, Docket No. 17-0707 (issued September 18, 2017).

¹⁵ *See S.M.*, Docket No. 22-1209 (issued February 27, 2024); *J.M.*, Docket No. 21-0569 (issued December 6, 2021); *see R.L.*, Docket No. 20-1069 (issued April 7, 2021); *B.B.*, Docket No. 18-1321 (issued April 5, 2019); *W.W.*, Docket No. 18-0093 (issued October 9, 2018); *Peter C. Belkind*, 56 ECAB 580 (2005).

¹⁶ *Id.*

rationalized second opinion regarding whether appellant's hearing loss and/or tinnitus was causally related to the accepted factors of his federal employment. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.¹⁷

ORDER

IT IS HEREBY ORDERED THAT the May 22, 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. The August 14, 2025 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: May 6, 2026
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

¹⁷ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.