

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

W.G., Appellant

and

**DEPARTMENT OF THE AIR FORCE, ROBINS
AIR FORCE BASE, GA, Employer**

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**Docket No. 13-1917
Issued: February 12, 2014**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2013 appellant filed a timely appeal from a July 30, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an employment-related hearing loss.

FACTUAL HISTORY

On April 26, 2013 appellant, then a 59-year-old aircraft production controller, filed an occupational disease or illness claim (Form CA-2) alleging that he sustained hearing loss as a result of his federal employment. He stated that he was exposed to noise from rivet guns,

¹ 5 U.S.C. § 8101 *et seq.*

hammers, aircraft engines and other equipment. The reverse of the claim form indicated that appellant was last exposed to noise on April 9, 2013 and currently worked in an office area.

The evidence submitted included a job description for an aircraft production controller, which did not discuss noise exposure. The job description stated that the employee may work in an office setting part of the time and may be required to visit production areas with exposure to fumes from chemicals. On May 9, 2013 appellant submitted audiograms performed on December 6, 2011 and April 3, 2013. The April 3, 2013 audiogram results are reported on a Department of Defense form and the December 6, 2011 audiographic results were from "Hearing Associates, Inc." Appellant also submitted an Occupational Safety and Health Authority Form 301 (incident report) dated April 9, 2013. On the form, an employing establishment physician, Dr. Marvin Taylor, diagnosed hearing loss and stated, "recommend further testing."

In a letter dated May 10, 2013, OWCP requested that appellant complete a questionnaire regarding his claim for compensation and respond within 30 days. Appellant was asked to provide his employment history, with a description of the sources of any noise exposure and information as to any noise protection devices. OWCP also issued a May 10, 2013 letter to the employing establishment requesting additional information as to noise exposure.

By decision dated July 30, 2013, OWCP denied the claim for compensation. It found that the factual and medical evidence was insufficient to establish the claim.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing the essential elements of his or her claim, including the fact 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 period of FECA, that an injury was sustained 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.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.⁵ Neither the condition becoming apparent during a period of employment nor the belief of the employee that the hearing loss was

² 5 U.S.C. §§ 8101-8193.

³ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁵ *Stanley K. Takahaski*, 35 ECAB 1065 (1984).

causally related to noise exposure in federal employment, is sufficient to establish causal relationship.⁶

ANALYSIS

Appellant filed a claim for an employment-related hearing loss. As noted, his burden includes the submission of both factual and medical evidence. As to the factual element of the claim, appellant alleged that he was exposed to noise while working as an aircraft production controller. The only evidence submitted to the record was a job description that did not discuss his noise exposure. The job description listed that some job duties would be performed in an office area, with some visits to production areas. The purpose of the May 10, 2013 letter to appellant was to provide him an opportunity to clarify the nature and extent of his occupational noise exposure. Appellant was provided an opportunity to describe in more detail the sources of noise exposure, the period of exposure and other relevant detail. Based on his description, the employing establishment may submit evidence confirming or clarifying the nature and extent of the noise exposure and the factual background for the claim may be established.⁷ Once the relevant factual background is established, the medical evidence is considered on the issue of causal relationship between any hearing loss and the established noise exposure in federal employment.

Appellant did not meet his burden of proof in this case. He did not submit sufficient factual evidence with respect to his alleged noise exposure or probative medical evidence from a physician under FECA with respect to an employment-related hearing loss.⁸

The Board notes that appellant may submit new and relevant evidence with respect to his employment-related noise loss exposure to OWCP.

CONCLUSION

The Board finds that appellant has not established an employment-related hearing loss.

⁶ See *John W. Butler*, 39 ECAB 852, 858 (1988).

⁷ See *M.H.*, Docket No. 12-733 (issued September 5, 2012) (appellant had submitted a detailed factual statement regarding noise exposure and OWCP should have secured available information from the employing establishment).

⁸ See 5 U.S.C. § 8101(2). An audiologist is not a physician under FECA. *J.H.*, Docket No. 12-366 (issued July 19, 2012). An audiogram prepared by an audiologist must be certified by a physician before it can be used to determine hearing loss and only a physician can provide a probative medical opinion on causal relationship between hearing loss and federal employment. See *Joshua A. Holmes*, 42 ECAB 231 (1990).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2013 is affirmed.

Issued: February 12, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board