

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

C.C., Appellant)

and)

**DEPARTMENT OF THE NAVY, PUGET
SOUND NAVAL SHIPYARD, Silverdale, WA,
Employer**)

**Docket No. 13-2162
Issued: February 25, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On September 23, 2013 appellant filed a timely appeal from a July 12, 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 hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On September 14, 2012 appellant, then a 61-year-old electrical supervisor, filed an occupational disease claim alleging that he sustained hearing loss due to noise exposure in the

¹ 5 U.S.C. § 8101 *et seq.*

course of his federal employment. He did not stop work. Appellant retired effective October 1, 2012.

In a statement dated October 29, 2012, appellant related that he was exposed to loud noise on ships and in shops. He submitted the results of an October 29, 2012 audiometric evaluation.

On November 16, 2012 the employing establishment related that it could not determine whether appellant participated in a hearing conservation program and that it was not able to provide noise exposure data while personnel records were being changed from paper to electronic copies.

By letter dated November 16, 2012, OWCP requested that Dr. Gerald G. Randolph, an attending Board-certified otolaryngologist, review noise exposure data and a statement of accepted facts and advise whether appellant's hearing resulted from noise exposure in the course of his federal employment.

On December 27, 2012 the employing establishment submitted the results of audiometric testing it obtained from 1984 to 2000.

In a report dated December 28, 2012, Dr. Randolph discussed appellant's complaints of "progressive hearing loss for approximately 30 years." He interpreted an audiogram dated on December 21, 2012 as showing "a relatively flat bilateral sensorineural hearing loss...." Dr. Randolph diagnosed bilateral sensorineural hearing loss. He stated:

"The claimant's audiogram reveals hearing loss with an audiometric configuration which is not compatible with hearing loss solely caused by industrial noise exposure. However, [appellant] did have industrial audiograms performed during his employment in civil service at [the employing establishment]. Review of those audiograms would allow me to make the determination if there is evidence of noise-induced hearing loss on his industrial audiograms."

In a supplemental report dated January 3, 2013, Dr. Randolph noted that he had not received audiograms from the employing establishment and that it was "unknown if he had hearing loss preexisting his civil service employment." He indicated that an audiogram obtained December 21, 2012 in his office revealed flat sensorineural hearing loss incompatible with hearing loss due to noise exposure but greatly exceeding what would be anticipated with normal hearing loss due to presbycusis. Dr. Randolph opined that the etiology of the flat sensorineural hearing loss was unknown but that he could rule out noise exposure as the primary cause given the lack of a conductive component. He diagnosed bilateral sensorineural hearing loss of undetermined etiology. Dr. Randolph concluded, "The sensorineural hearing loss seen, in my opinion, is *not* due to noise exposure encountered in the claimant's federal civilian employment. However, I would still like to review the claimant's industrial audiogram to see if there is evidence on those audiograms of hearing loss aggravated by noise exposure." (Emphasis in original.)

By decision dated January 31, 2013, OWCP denied appellant's claim after finding that the medical evidence was insufficient to show that he sustained hearing loss as a result of his federal employment.

On February 1, 2013 the employing establishment provided additional noise exposure data.

On February 15, 2013 appellant requested a review of the written record. In an accompanying undated statement, he advised that the employing establishment obtained yearly audiograms from 1981 until he was "taken off the hearing conservation program." Appellant described his work in areas with loud noise.

In a decision dated May 13, 2013, an OWCP hearing representative vacated the January 31, 2013 decision. She instructed OWCP to update the statement of accepted facts with current information regarding appellant's noise exposure and to refer the audiogram results from the employing establishment's health clinic to Dr. Randolph to review and provide a supplemental report regarding whether his hearing loss resulted from or was aggravated by noise exposure in the course of his federal employment.

On June 4, 2013 OWCP requested that Dr. Randolph review the audiogram obtained by the employing establishment and the updated statement of accepted facts and address the relationship between appellant's hearing loss and noise exposure at work.

In an addendum report dated June 13, 2013, Dr. Randolph indicated that he had reviewed audiograms from 1981 until the date of his December 21, 2012 evaluation. He stated:

"Review of [appellant's] audiograms reveal that his hearing loss progressed in a manner not consistent with hearing loss due to noise exposure. Consistently the hearing loss progressed in those frequencies not affected by noise."

"Therefore, it remains my opinion, on a more probable than not basis that [appellant's] hearing loss is not due to or aggravated by his civil service industrial noise exposure."

By decision dated July 12, 2013, OWCP denied appellant's claim after finding that the opinion of Dr. Randolph established that his hearing loss was not caused or aggravated by noise exposure in the course of his federal employment.

On appeal appellant argues that Dr. Randolph initially found that his noise exposure did not solely cause his hearing loss but then subsequently found that the hearing loss was not work related. He referred to a statement submitted to OWCP's hearing representative explaining why he believed that his noise exposure caused, in part, his hearing loss.

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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁵ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁶ and (3) medical evidence establishing the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁸ must be one of reasonable medical certainty⁹ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

It is not disputed that appellant was exposed to employment-related noise during the course of his federal employment. The Board finds, however, that the medical evidence does not establish that his hearing loss is causally related to his workplace noise exposure.

² 5 U.S.C. § 8101 *et seq.*

³ *Tracey P. Spillane*, 54 ECAB 608 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Michael R. Shaffer*, 55 ECAB 386 (2004).

⁶ *Marlon Vera*, 54 ECAB 834 (2003); *Roger Williams*, 52 ECAB 468 (2001).

⁷ *Beverly A. Spencer*, 55 ECAB 501 (2004).

⁸ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

¹⁰ *Judy C. Rogers*, 54 ECAB 693 (2003).

OWCP requested that Dr. Randolph, an attending Board-certified otolaryngologist, review noise exposure data and provide an opinion regarding the cause of any hearing loss. In a report dated December 28, 2012, Dr. Randolph related that a December 21, 2012 audiogram showed bilateral sensorineural hearing loss. He found that the audiogram did not show hearing loss consistent with that caused by noise exposure. Dr. Randolph, however, indicated that it would be useful to review audiograms from appellant's employment to see whether these revealed a noise-induced loss of hearing. In a January 3, 2013 addendum, he advised that the December 21, 2012 audiogram revealed flat hearing loss incompatible with hearing loss due to noise exposure but in excess of that usual with presbycusis. Dr. Randolph related that he was unable to determine the etiology of appellant's hearing loss but could eliminate noise exposure as the main cause based on the lack of a "conductive component."

On June 4, 2013 OWCP provided Dr. Randolph with updated noise exposure data and the audiograms from the employing establishment. In a supplemental report dated June 13, 2013, Dr. Randolph advised that a review of the audiograms established appellant's hearing loss that "progressed in a manner not consistent with hearing loss due to noise exposure." He concluded that he had not sustained hearing loss due to or aggravated by noise exposure in the course of his federal employment.

The Board finds that Dr. Randolph's well-reasoned reports constitute the weight of the evidence. He provided rationale for his opinion by explaining that a review of the audiograms showed that the hearing was unrelated to noise exposure due to the progression of the hearing loss. Dr. Randolph also explained that the noise loss on the December 21, 2012 audiogram revealed a bilateral flat sensorineural hearing loss without a conductive component which was incompatible to hearing loss due to noise exposure. Thus, his opinion did not establish that appellant sustained hearing loss due to exposure to noise in the workplace.¹¹ Appellant has not submitted any medical evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure.

On appeal appellant argues that Dr. Randolph's opinion was inconsistent as he first determined that noise exposure was not solely responsible for his hearing loss but later found that the hearing loss was entirely unrelated to employment. However, as discussed, Dr. Randolph provided a definite and reasoned opinion that his hearing loss was not related to employment after he had the opportunity to review the audiograms obtained by the employing establishment.¹²

Appellant also enclosed his statement to OWCP's hearing representative describing his noise exposure. OWCP, however, has accepted that he was exposed to noise during the course of his federal employment. The issue is whether the medical evidence establishes that he

¹¹ See *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹² See *M.C.*, Docket No. 10-889 (issued November 15, 2010).

sustained hearing loss as a result of the noise exposure. The question of causal relationship is a medical one and must be resolved by probative medical evidence.¹³

Appellant submitted new medical evidence on appeal. The Board has no jurisdiction to review new evidence on appeal.¹⁴ However, 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 and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained hearing loss causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 25, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹³ See *A.D.*, 58 ECAB 149 (2006).

¹⁴ See 20 C.F.R. § 501.2(c)(1).