

FACTUAL HISTORY

On August 22, 2012 appellant, then a 36-year-old air traffic control specialist, filed a traumatic injury claim alleging that he sustained right ear pain due to multiple loud tones on frequency that day. He stopped work on August 31, 2012 and was released to full-duty work on September 8, 2012.

In correspondence dated September 6, 2012, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised as to the medical and factual evidence required to establish his claim and given 30 days to provide additional information.

In a September 7, 2012 e-mail, Jeffrey Brooks, operations manager, noted that appellant's headset had been tested and his noise suppressor was shown to be working correctly. He attached a copy of an August 23, 2012 incident report showing that there was a change of one decibel and the transmission decibel level was within acceptable levels. Mr. Brooks noted that the sound was electronic radio interference and not a tone.

In an August 23, 2012 New York incident report addressing the August 22, 2012 tone incident, a technician noted that, while the sound appeared to be pronounced, this was due to it being "a single pitch as opposed to normal modulation." He stated that it "[s]ounded like a data burst and not a test tone." The frequency of the tone was .999 Hertz (Hz) -1.30 Hz and the level of tone was -4.0 decibels. The technician stated that the test tone would be 1,004 Hz and normally would be found a T-8 decibels or -13.0 decibels. He indicated that the tone level was one decibel above the aircraft audio or position/controller.

On October 4, 2012 OWCP received an August 31, 2012 attending physician's report (Form CA-20) from Dr. Robert A. Feld, a treating Board-certified otolaryngologist, who diagnosed right ear sensorineural hearing loss due to sound trauma. Under history of injury, Dr. Feld stated that appellant had been exposed to an extremely loud sound in his right ear headset. He checked "yes" to the form question of whether the condition was employment related. Dr. Feld advised that appellant was totally disabled from working from August 31 to September 7, 2012.

By decision dated October 16, 2012, OWCP denied appellant's claim finding that he was not exposed to loud noise on his headset on August 22, 2012.

On November 11, 2012 appellant requested an oral hearing before an OWCP hearing representative, which was held on February 4, 2013.

In a January 28, 2013 report, Dr. Feld stated that appellant was first seen on August 31, 2012. Appellant related being exposed to an extremely loud noise on his headset while at work. He experienced a persistent ringing sound and pain. Dr. Feld diagnosed right ear hearing loss based on audiologic examination. He stated that, due to the excessive sound, appellant sustained a traumatic acoustic nerve injury.

On February 7, 2013 OWCP received reports dated August 31 and September 7, 2012 from Dr. Feld. Appellant related that on August 22, 2012 he was exposed to loud noise in his right ear due to a head set used at work. Dr. Feld diagnosed acoustic trauma and mild sensorineural loss and that appellant was currently disabled from work. He was released to return to work, as of September 7, 2012.

By decision dated March 25, 2013, an OWCP hearing representative affirmed the denial of appellant's claim, on the grounds that he failed to establish that he had been exposed to loud noises on his headset as alleged.²

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

ANALYSIS

Appellant alleged that he sustained right ear pain on August 22, 2012 due to exposure to multiple loud tones on frequency while working as an air traffic control specialist. OWCP denied his claim on October 16, 2012 finding that the injury did not occur in the manner alleged.

² The Board notes that, following the March 25, 2013 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

³ 5 U.S.C. § 8101 *et seq.*

⁴ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

On March 25, 2013 an OWCP hearing representative affirmed the denial of appellant's claim as the evidence of record failed to establish that the noise exposure was above the permissible level.

The Board finds that the factual evidence of record does not support appellant's claim that he was exposed to loud noise in his headset on August 22, 2012. Mr. Brooks, operations manager, stated that appellant's headset had been tested for the period in question and that the test showed the noise suppressor for the headset was working correctly. In addition, Mr. Brooks provided a copy of an August 23, 2012 incident report which showed that at the time of the alleged incident that the transmission decibel level was within acceptable levels and the actual deviation was one decibel. Appellant has not submitted sufficient evidence that he was exposed to loud noise in his headset on August 22, 2012.

Although an employee's statement which alleges that an injury occurred at a given time and in a given manner is generally accorded great probative value, there is strong and persuasive evidence refuting appellant's account of the August 22, 2012 event.⁹ The Board finds that he has not established the occurrence of the August 22, 2012 work incident in the manner alleged and, therefore, has not established that he sustained an injury in the performance of duty.

On appeal appellant argued that the medical evidence establishes his claim. In order to establish his claim, he must first demonstrate that the incident occurred in the manner alleged. The factual evidence consists of an incident report and testing of his headset which do not substantiate appellant's allegation that he was exposed to loud noise. As the factual evidence negates exposure to the alleged loud noise, the Board finds that he failed to establish that the employment incident occurred in the manner alleged.

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 establish that he sustained a traumatic injury in the performance of duty on August 22, 2012.

⁹ *Robert A. Gregory*, 40 ECAB 478 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

ORDER

IT IS HEREBY ORDERED THAT the March 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 20, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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