

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

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A.C., Appellant	)	
	)	
and	)	
	)	<b>Docket No. 16-0762</b>
	)	<b>Issued: June 22, 2016</b>
<b>DEPARTMENT OF THE NAVY, NAVAL AIR</b>	)	
<b>SYSTEMS COMMAND, San Diego, CA,</b>	)	
<b>Employer</b>	)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

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

**JURISDICTION**

On March 7, 2015 appellant filed a timely appeal of a December 15, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof to establish bilateral hearing loss causally related to factors of his federal employment.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On April 16, 2015 appellant, then a 67-year-old pneudraulic systems mechanic inspector, filed an occupational disease claim (Form CA-2) alleging that on November 21, 2011 he first realized that his hearing loss was employment related.<sup>2</sup>

On April 23, 2015 OWCP received an undated and unsigned chronology of military and civilian noise exposure from 1967 to 2014. Appellant related he was exposed to noise from January 1974 to November 2014 at the employing establishment.

By letter dated May 1, 2015, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It requested that he submit additional factual evidence in support of his claim. OWCP also requested that the employing establishment respond to appellant's allegations and provide noise survey reports for each site where he worked, the sources and period of noise exposure for each location, whether he wore ear protection, and copies of all medical examinations pertaining to hearing or ear problems, including preemployment examinations and audiograms. Appellant was afforded 30 days to submit this additional evidence.

OWCP received audiograms performed by the employing establishment as part of a hearing conservation program dated March 30, 1989 through October 20, 2014. It also received employment records, which included industrial hygiene noise survey data and a description of his pneudraulic systems mechanic inspector position.

By letter dated September 29, 2015, OWCP referred appellant for a second opinion evaluation for appellant with Dr. Theodore Mazer, a Board-certified otolaryngologist.

In an October 30, 2015 report, Dr. Mazer noted that appellant complained of bilateral tinnitus, which was greater in the left ear. He diagnosed sensorineural hearing loss, which he concluded was unrelated to appellant's federal employment from 1988 to 2014. Dr. Mazer reported appellant had longstanding tinnitus which dated back to 1988. He reviewed the audiograms from the hearing conservation program testing and concluded there was no evidence of progressive hearing loss through 2012 for the right ear with slight change on the left. Dr. Mazer reported that appellant's baseline was reset in 2012 with no significant changes from 2012 to 2014. The lack of any significant change, and no noise notch pattern, according to Dr. Mazer was evidence that appellant's hearing loss was not caused by his federal employment. In addition, he explained that lack of a ratable hearing loss following the cessation of noise exposure and the advanced slopping pattern was indicative of age-related changes rather than due to appellant's federal employment. The October 30, 2015 audiogram, with an attached calibration certificate, showed hearing levels at 500, 1,000, 2,000, and 3,000 hertz respectively of 20, 25, 25, and 25 decibels (dB) on the right and 25, 30, 30, and 35 dB on the left.

By decision dated December 15, 2015, OWCP denied appellant's hearing loss claim. It found that appellant had not provided medical evidence supporting hearing loss due to factors of his federal employment.

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<sup>2</sup> Appellant retired from the employing establishment in November 2014.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish 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.<sup>4</sup> 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.<sup>5</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>6</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>8</sup>

Appellant has the burden of establishing by weight of the reliable, probative, and substantial evidence that his hearing loss condition was causally related to noise exposure in his federal employment.<sup>9</sup> Neither the condition becoming apparent during a period of employment, nor the belief of the employee that the hearing loss was causally related to noise exposure in federal employment, is sufficient to establish causal relationship.<sup>10</sup>

## ANALYSIS

Appellant alleged that he sustained hearing loss due to noise exposure at his federal employment. OWCP accepted that appellant was exposed to employment-related noise, but found the medical evidence insufficient to establish that his hearing loss was causally related to his workplace noise exposure.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

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

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

<sup>6</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

<sup>7</sup> *J.J.*, Docket No. 09-27 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006)

<sup>8</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>9</sup> *K.S.*, Docket No. 16-0035 (issued April 27, 2016).

<sup>10</sup> *See John W. Butler*, 39 ECAB 852, 858 (1988).

OWCP referred appellant to Dr. Mazer for an opinion as to the cause of his hearing loss. In an October 30, 2015 report, Dr. Mazer reviewed the statement of accepted facts, noted appellant's history, reviewed the medical and audiological evidence, presented examination finding, and reported results from an October 30, 2015 audiogram. He observed that appellant had longstanding tinnitus going back to 1988. Based on a review of audiograms from the hearing conservation program testing, Dr. Mazer found no evidence of any progressive hearing loss through 2012 for the right ear and a slight change on the left. He observed that appellant's baseline was reset in 2012 and there had been no significant changes from 2012 to 2014. Dr. Mazer concluded that appellant's hearing loss was not causally related to his federal employment noise exposure based on the lack of any significant change, and no noise notch pattern. In support of his conclusion, he explained that lack of a ratable hearing loss following the cessation of noise exposure and the advanced slopping pattern were indicative of age-related changes rather than causation due to appellant's federal employment. Thus, Dr. Mazer found no basis on which to attribute appellant's hearing loss to the accepted history of workplace noise exposure.

The Board finds that Dr. Mazer's well-reasoned report constitutes the weight of the medical evidence. Dr. Mazer fully explained the reasons for his opinion referencing current and previous audiometric test results. Appellant has not submitted any medical opinion evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure. Accordingly, the Board finds that OWCP properly denied his claim in its December 15, 2015 decision.

On appeal appellant asserts that his hearing loss is not age related and began in 1998. He further noted that he was diagnosed with unilateral tinnitus in March 1998 and that the condition has worsened over the years. However, neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused, precipitated, or aggravated by his employment is sufficient to establish a causal relationship.<sup>11</sup>

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 did not meet his burden of proof to establish bilateral hearing loss causally related to factors of his federal employment.

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<sup>11</sup> *W.D.*, Docket No. 09-658 (issued October 22, 2009); *G.T.*, 59 ECAB 447 (2008); *Robert G. Morris*, 48 ECAB 238, 239 (1996).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 15, 2015 is affirmed.

Issued: June 22, 2016  
Washington, DC

Christopher J. Godfrey, 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