



occupational hearing loss. He indicated that on April 29, 2016 he first became aware of his claimed condition and realized that it was caused or aggravated by factors of his federal employment. Regarding the relationship between the claimed condition and his employment, appellant noted that he was a firearms instructor for 14 to 15 years of his 20 years with the employing establishment. He indicated that he underwent a hearing test which showed that he needed hearing aids and that he had 40.6 percent hearing loss in his right ear and 54.4 percent hearing loss in his left ear. On the same form, appellant's immediate supervisor indicated that appellant was last exposed to conditions alleged to have caused his occupational disease on May 31, 2014 and that appellant first reported his claimed condition to him on June 12, 2016.<sup>2</sup>

Appellant submitted a copy of an audiogram detailing audiometric testing results obtained on April 29, 2016 by an individual listed as a hearing aid dealer and technician from the Costco Hearing Aid Center in Kalispell, Montana.

In a July 7, 2016 letter, OWCP advised appellant that the documentation received to date had been reviewed and was deemed insufficient to support his claim because that evidence was "not sufficient to establish that you actually experienced the employment factor(s) alleged to have caused injury" and was not "sufficient to support that you were injured while performing any duty of your employment." It requested that appellant complete and return an enclosed development questionnaire within 30 days. The questionnaire requested that appellant list his employment history by employer, job title, and inclusive dates, including all employment (federal and non-federal) as well as military service. Appellant was asked, for each job title, to describe the source of noise, number of hours of exposure per day, and use of any safety devices to protect against noise exposure. The questionnaire requested that appellant indicate whether he was still exposed to hazardous noise at work. He was asked to describe all previous hearing problems and submit copies of medical reports and audiograms concerning his hearing.

In a separate letter dated July 7, 2016, OWCP requested that the employing establishment submit information within 30 days. Specifically, the employing establishment was asked to provide comments from a knowledgeable supervisor on the accuracy of all statements provided by appellant relative to his claim and to indicate whether the employing establishment concurred with his allegations. OWCP requested information regarding the locations of job sites where exposure allegedly occurred, the sources of exposure to noise, the decibel and frequency level (per noise survey report) for each job site, the period of exposure (hours per day and days per week), and the types of ear protection provided. The employing establishment was also asked to provide copies of all medical examinations pertaining to appellant's hearing or ear problems (including any audiogram or preemployment examination), and a copy of his position description. OWCP requested that, if appellant was no longer exposed to hazardous noise in the workplace, the date of last exposure should be provided.

Appellant submitted additional evidence in support of his claim, including receipts for bilateral hearing aids he purchased on May 12, 2016. In a May 10, 2016 letter, an audiologist from the Costco Hearing Aid Center in Kalispell, Montana reported that appellant visited for an audiologic evaluation on that date and that it was determined he had a high frequency,

---

<sup>2</sup> Appellant explained on the claim form that he had not filed his Form CA-2 earlier because he had been "out on a knee injury" and did not return to work until June 11, 2016.

sensorineural hearing loss bilaterally. The audiologist indicated that appellant's audibility index was 59.4 percent in his right ear and 45.54 percent in his left ear. She noted that appellant reported that he had engaged in a lot of firearms shooting on the job and she opined that this shooting was sufficient to cause hearing loss. The audiologist indicated that appellant's hearing loss was most likely from exposure to loud noise and noted, "Since he states he has no recreational activities that are noisy, his loss of hearing very likely has occurred on the job."<sup>3</sup>

In a July 18, 2016 narrative statement, appellant indicated that he had been in the U.S. Air Force from 1978 to 1995, but advised that no hearing loss was noted upon his discharge from the military. He indicated that he worked for the U.S. Air Force as a firefighter, nuclear weapons specialist, subsistence operations specialist, and commissary officer. Appellant noted that, as for being exposed to hazardous noise at work, he was no longer teaching firearms training. He indicated, however, that he still had to qualify on a quarterly basis each year with the firearms program and that he wore ear protection. Appellant reported that he formerly was the lead firearms instructor for all of Michigan and had taught over 250 officers in Michigan and 17 officers in Montana. He explained that, when he worked in Michigan, he was on the firing range for four to five hours per week, during which time he shot shotguns and other weapons and set off smoke grenades and flash bangs. Appellant advised that he first related his hearing loss to his federal employment after he had hearing testing performed at the Kalispell, Montana Costco in April 2016. He noted that he was unsuccessful in obtaining hearing loss records from his employers.

Appellant submitted a July 29, 2016 audiogram from Moore Hearing, P.C. It is unclear who conducted this audiometric testing. Appellant resubmitted a copy of the April 29, 2016 audiogram and the May 10, 2016 letter of the audiologist.

In a letter dated July 13, 2016, appellant's immediate supervisor indicated that he had supervised appellant for the past three years. He noted that appellant formerly served as the collateral duty firearms instructor for the employing establishment at Port of Piegan, Montana.<sup>4</sup> The supervisor indicated that, as a firearms instructor, appellant would take officers to the range to qualify them and that he performed this function seven times over the last three years. He noted that he believed appellant transferred in 2006 from Detroit, Michigan, to Port of Piegan. The supervisor indicated that appellant was relieved of his firearms instructor duties in 2015. He noted that a person in appellant's current position, Supervisory Customs and Border Protection Officer, is required to carry a firearm and qualify quarterly (four times a year).<sup>5</sup> The supervisor indicated that appellant had qualified twice since being relieved of his firearms instructor duties in 2015. He discussed the type of ear protection provided to appellant (inner earplugs and hard-shell outer ear protection) and reported the findings of workplace decibel level testing obtained on February 9, 2010 with respect to the workplaces of three coworkers. The employing establishment submitted a position description of appellant's current job as a Supervisory

---

<sup>3</sup> Appellant submitted another copy of the April 29, 2016 audiogram he had previously submitted.

<sup>4</sup> Port of Piegan is a border crossing point with Canada which is located in the town of Babb, Montana.

<sup>5</sup> The supervisor noted that each of appellant's own firearms qualifying sessions lasted approximately three hours. The employing establishment submitted documents memorializing the dates of some of appellant's firearms qualifying sessions between 2009 and 2016.

Customs and Border Protection Officer (a series 1895 job) and a document detailing requirements for all series 1895 jobs, including maintaining proficiency in the use of firearms.

In an October 24, 2016 decision, OWCP denied appellant's hearing loss claim noting that he failed to meet his burden of proof to establish the factual component of his claim, *i.e.*, the fact of injury. Regarding the specific reason for the denial, it noted that "the evidence is not sufficient to establish that the event(s) occurred as you described." OWCP discussed its July 7, 2016 letter requesting information from appellant, but found that appellant had not provided information about job titles, periods of daily noise exposure, or use of safety devices, and indicated that he failed to submit adequate evidence of exposure to hazardous noise at work. It also determined that appellant did not submit any medical evidence to establish that a diagnosed medical condition was causally related to the claimed work injury or event.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</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 timely filed within the applicable time limitation period of FECA, that the 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>7</sup>

OWCP regulations define the term "[o]ccupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift.<sup>8</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (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 employee.<sup>9</sup> The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.<sup>10</sup>

### **ANALYSIS**

On June 14, 2016 appellant filed an occupational disease claim alleging bilateral occupational hearing loss due to being exposed to noise while working for the employing

---

<sup>6</sup> *Supra* note 1.

<sup>7</sup> 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

<sup>9</sup> *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

establishment, including an extended period when he worked as a firearms instructor. On his Form CA-2 he noted that he was a firearms instructor for 14 to 15 years of his 20 years with the employing establishment. Appellant responded to OWCP's July 7, 2016 development letter requesting additional information about exposure to hazardous noise and indicated that he formerly was the lead firearms instructor for all of Michigan and had taught over 250 officers in Michigan and 17 officers in Montana. He indicated that, when he worked in Michigan, he was on the firing range for four to five hours per week during which time he shot shotguns and other weapons and set off smoke grenades and flash bangs. Appellant also described his military service in the U.S. Air Force between 1978 and 1995, but advised that no hearing loss was noted upon his discharge from the military.<sup>11</sup>

In an October 24, 2016 decision, OWCP denied appellant's hearing loss claim noting that he had not established fact of injury because "the evidence is not sufficient to establish that the event(s) occurred as you described." It found that appellant had failed to provide information about job titles, periods of daily noise exposure, or use of safety devices, and indicated that he failed to submit adequate evidence of exposure to hazardous noise at work. OWCP also determined that appellant failed to submit any medical evidence to establish that a diagnosed medical condition causally related to the claimed factors of his federal employment.

The Board finds that the case is not in posture for decision regarding whether appellant sustained a hearing loss due to factors of his federal employment.

On July 7, 2016 OWCP had requested that the employing establishment provide detailed information about appellant's employment history, noise exposure (including copies of noise level surveys for each work location), the sources and periods of noise exposure, and whether he wore ear protection. In a response dated July 13, 2016, appellant's immediate supervisor provided only limited information about appellant's exposure to noise for the prior three years.<sup>12</sup> As noted above, appellant indicated that he was a firearms instructor for 14 to 15 years of his 20 years with the employing establishment and advised that he had provided firearms training to more than 250 employees. Therefore, the employing establishment only addressed a short portion of appellant's claimed period of noise exposure. Moreover, the employing establishment did not, as requested, submit any noise level surveys specifically pertaining to appellant's noise exposure, or otherwise provide the specific decibel levels to which he was exposed over the extended period he served as a firearms instructor.<sup>13</sup>

---

<sup>11</sup> Appellant also submitted audiograms dated April 29 and July 29, 2016.

<sup>12</sup> The supervisor advised that, in the prior three years, appellant took officers to the range seven times in order to qualify them. He noted that appellant was relieved of his firearms instructor duties in 2015, but still had to pass firearms testing on a quarterly basis each year in order to keep his job as a Supervisory Customs and Border Protection Officer. The supervisor indicated that, since being relieved of his firearms instructor duties, appellant had passed firearms testing on two occasions.

<sup>13</sup> The supervisor only reported the findings of workplace decibel level testing obtained on February 9, 2010 with respect to the workplaces of three coworkers of appellant. It is unclear from the record whether these coworkers worked in the same area as appellant. The employing establishment also did not submit any findings of audiologic testing conducted at the workplace.

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the evidence.<sup>14</sup> This is particularly true when the evidence is of the character normally obtained from the employing establishment or other government source.<sup>15</sup> OWCP's regulations provide that the employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means.<sup>16</sup>

OWCP failed to obtain adequate information about the duration and level of appellant's noise exposure during the course of his federal employment prior to denying his claim. The Board will therefore remand the case for OWCP to obtain the dates and periods of appellant's noise exposure at the employing establishment and the specific decibel levels to which he was exposed.<sup>17</sup>

After carrying out this and any other additional development, OWCP shall issue a *de novo* decision regarding appellant's hearing loss claim.

### **CONCLUSION**

The Board finds the case is not in posture for decision regarding whether appellant sustained a hearing loss due to factors of his federal employment.

---

<sup>14</sup> See *Claudia A. Dixon*, 47 ECAB 168 (1995).

<sup>15</sup> *Willie A. Dean*, 40 ECAB 1208 (1989). OWCP's procedures provide that it will attempt to obtain relevant factual and medical evidence from the employing establishment. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.10a, b (June 2011). These procedures also provide that the employing establishment is often the best source for a chronological history of employment because of the recordkeeping involved in a personnel office. *Id.* at Chapter 2.800.7b(3). Although the claimant should be asked to describe the physical and environmental requirements of his or her job, the supervisor or injury compensation specialist should review that statement and provide comments if there is any disagreement. *Id.* at Chapter 2.800.7b(2)(b).

<sup>16</sup> 20 C.F.R. § 10.118(a).

<sup>17</sup> See *R.B.*, Docket No. 08-1662 (issued December 18, 2008). On remand OWCP should also provide the findings of any audiologic testing it conducted on appellant.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 24, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further action consistent with this decision.

Issued: August 10, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board