

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

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<b>B.B., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0625</b>
	)	<b>Issued: October 2, 2019</b>
<b>DEPARTMENT OF THE NAVY, PUGET</b>	)	
<b>SOUND NAVAL SHIPYARD &amp;</b>	)	
<b>INTERMEDIATE MAINTENANCE FACILITY,</b>	)	
<b>Bremerton, WA 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:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On January 28, 2019 appellant filed a timely appeal from a January 14, 2019 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 over the merits of this case.

**ISSUE**

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

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

## **FACTUAL HISTORY**

On May 11, 2018 appellant, then a 66-year-old retired supervisory environmental engineer, filed an occupational disease claim (Form CA-2) alleging that noise exposure caused binaural hearing loss due to factors of his federal employment. He noted that he first became aware of his condition and realized its relation to his federal employment on August 1, 2011. Appellant retired from the employing establishment on January 2, 2012.

In an attached checklist for filing federal occupational hearing loss claim, appellant noted that he did not have a prior history of ear or hearing problems, and that as a hobby he enjoys carpentry, but wears ear protection while engaging in that activity. In separate attached form titled "employment history," he related that the source of the noise at his federal employment included "waterfront shipboard chippers, grinders, cranes, needle guns, sand blasters, etc." and that he was exposed to the noise for eight hours each day plus overtime. Appellant noted that hearing protection was provided and used.

OWCP also received audiogram results from June 4, 1980 through August 16, 2002, which were administered as part of the employing establishment's hearing conservation program. It also received the results of an April 16, 2018 audiogram.

After further development of the record, OWCP prepared a statement of accepted facts and referred appellant, along with the relevant medical evidence, to Dr. Edward Treyve, a Board-certified otolaryngologist, for a second opinion examination.

In a December 6, 2018 report, Dr. Treyve recounted that appellant experienced bilateral progressive hearing loss over the past three years. He noted appellant's hearing capacities gradually diminished, and have disproportionately diminished on his left side. Appellant had related that it was challenging for him to communicate with background noise and that he experienced tinnitus which is high-pitched and rare. His medical history included multiple ear infections when he was a child, and family history of old-age hearing loss. Dr. Treyve reviewed appellant's past audiograms and noted that while in 1980 his hearing was normal in both ears, in 2000 a drop was noted in the left ear and in 2002 mild high-frequency hearing loss was noted in the left ear. He noted that appellant's audiometry from April 16, 2018 indicated moderately severe bilateral high-frequency hearing loss.

Appellant indicated that he engages in recreational activities with significant noise exposure including the use of power tools such as a weed eater, leaf blower, and lawn mower for yard work. He additionally engages in the infrequent use of shop tools and the very infrequent use of chainsaws. The report noted that appellant wears ear protection for all of these activities. His occupational history included building homes using power tools as a carpenter while using ear protection from 1976 to 1980. Appellant recounted that from 1980 to 1997 he worked on a ship directing nuclear component testing and was surrounded by continuous noise that included chipping, cranes, descenders, and needle guns. He stated that he "mostly wore ear protection, but once in a while did not because he needed to communicate." From 1998 until 2012 appellant was an environmental engineer and spent half of his time working on the waterfront surrounded by the constant noise of motors, pneumatic tools, and cranes.

Dr. Treyve's physical examination of appellant's ears indicated normal pinna bilaterally with normal ear canals and tympanic membranes. The report documented an audiometry performed by an audiologist and signed by Dr. Treyve which revealed "a bilateral mild to moderate[-]high-frequency sensorineural loss symmetric with excellent discrimination of 100 [present] bilaterally." Additionally, appellant's reflexes on his right were absent and on his reflexes on his left were diminished.

Dr. Treyve diagnosed late onset asymmetric bilateral sensorineural hearing loss. He reasoned that because appellant only experienced hearing loss during the second part of his federal employment when he worked with less noise than in the first part of his federal employment, the identified federal employment factors did not cause appellant's hearing loss. Dr. Treyve stated that it was more likely than not that appellant's hearing loss was due to presbycusis (age related).

In response to questions by OWCP, Dr. Treyve noted that, while the workplace noise in appellant's federal employment may have had the capacity to cause hearing loss, he did not believe that it caused appellant's hearing loss. He also noted that the hearing loss appellant sustained since the beginning of his exposure to his federal employment's workplace noise was not in excess of typical predicted age-related hearing loss, and that no other exposures or diseases contributed to appellant's hearing loss.

By decision dated January 14, 2019, OWCP denied appellant's claim, finding that the medical evidence of record did not establish that his diagnosed late onset asymmetric binaural sensorineural hearing loss was causally related to the accepted factors of his federal employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>2</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 of FECA,<sup>3</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.<sup>5</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;

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<sup>2</sup> *Id.*

<sup>3</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

(2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>6</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>7</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>8</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral sensorineural hearing loss causally related to the accepted factors of his federal employment.

In support of his claim, appellant submitted medical records containing an audiometry report from April 16, 2018 and a series of workplace audiograms from 1980 through 2002. The April 16, 2018 audiometry report was signed by an audiologist and the series audiograms that indicated he experienced a statistical threshold shift and was routinely exposed to noise were not signed by a physician. These documents are of no probative value because audiologists are not considered to be qualified physicians within the meaning provided by FECA.<sup>10</sup>

The two audiograms furnished by appellant that are signed by physicians are of no probative value to the issue of causal relationship because they offer no opinion on whether his hearing loss was causally related to the routine noise exposure at his federal employment.<sup>11</sup>

OWCP properly referred appellant to Dr. Treyve for a second opinion. Dr. Treyve conducted a physical examination of appellant and reviewed appellant's medical and factual history including past audiograms, occupational history, and recreational history. He diagnosed late onset asymmetric bilateral sensorineural hearing loss and stated that, because appellant only experienced hearing loss during the second part of his federal employment when he worked with less noise than in the first part of his federal employment, Dr. Treyve did not believe that appellant's accepted federal employment factors caused his hearing loss. Rather, Dr. Treyve opined that it was more likely than not that appellant's hearing loss was age related.

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<sup>6</sup> *M.S.*, Docket No. 18-1554 (issued February 8, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *Victor J. Woodhams*, *supra* note 6.

<sup>9</sup> *Id.*

<sup>10</sup> *See H.M.*, Docket No. 19-0188 (issued April 26, 2019).

<sup>11</sup> *M.S.*, Docket No. 19-0189 (issued May 14, 2019).

The Board finds that Dr. Treyve's opinion is based on a proper factual and medical history, as he reviewed current and previous audiometric and audiogram test results and related his findings on examination and testing in support of his opinion that appellant's hearing loss was not due to the noise in his federal employment.<sup>12</sup> Dr. Treyve's December 6, 2018 report therefore represents the weight of the medical evidence and establishes appellant's hearing loss was not due to exposure to noise in his federal workplace.<sup>13</sup>

As appellant has not submitted rationalized medical evidence establishing hearing loss related to his accepted federal employment factors, he has not met his burden of proof.

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 established binaural sensorineural hearing loss causally related to the accepted factors of his federal employment.

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<sup>12</sup> See *T.C.*, Docket No. 17-0872 (issued October 5, 2017).

<sup>13</sup> See *id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 14, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 2, 2019  
Washington, DC

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board