

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

G.G., Appellant)	
)	
and)	Docket No. 19-1084
)	Issued: October 23, 2019
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 15, 2019 appellant filed a timely appeal from an April 3, 2019 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 met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On October 24, 2018 appellant, then a 74-year-old retired sign painter, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss and

¹ 5 U.S.C. § 8101 *et seq.*

tinnitus as a result of exposure to noise while in the performance of duty. He indicated that he first became aware of his hearing loss and learned that his hearing loss was employment related on June 1, 1993. On the reverse side of the claim form, a supervisor noted that appellant retired on September 30, 1993 and was last exposed to conditions alleged to have caused his hearing loss on that date. The supervisor stated that appellant had first reported the condition to a supervisor on October 17, 2018 and noted that the employing establishment would challenge appellant's claim.

OWCP received hearing conservation data, including a reference audiogram dated May 3, 1984 and an audiogram dated May 10, 1993. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) a reference audiogram dated May 3, 1984 documented appellant's hearing as follows: 0, 5, 15, and 15 decibels (dBs) in the left ear, and 0, 5, 15, and 40 dBs in the right ear. Using the same frequencies, a May 10, 1993 audiogram revealed appellant's hearing measured as: 0, 10, 15, and 20 dBs in the left ear and 0, 5, 20, and 50 dBs in the right ear.

In an audiogram dated July 27, 2018, an audiologist using the same frequencies measured appellant's hearing as follows: 10, 20, 40, and 50 dBs in the left ear and 10, 15, 40, and 55 dBs in the right ear.

In a checklist for filing a federal occupational hearing loss claim, dated July 27, 2018, appellant noted that he had worked at the employing establishment from 1968 through 1993. From 1968 through 1989, he worked as a painter and was exposed to noise from the waterfront, chippers, grinders, deck-crawlers, needle guns, cranes, and forklifts for eight hours per day plus overtime with safety devices provided and used to protect against noise exposure. From 1989 through 1993, appellant worked as a rigger and was exposed to the same sources of noise for up to 14 hours per day with safety devices provided and used to protect against noise exposure. From 1994 through 1997, he worked for a private company as a part-time helper and was exposed to noise from nailing guns, heavy equipment, loaders, dump trucks, and graters for up to four hours per day with safety devices provided and used to protect against noise exposure. From 1998 through 2015, appellant worked for another private company as a truck driver and was exposed to noises from long haul trucks without safety devices provided or used.

In a November 2, 2018 development letter, OWCP informed appellant that he had not submitted sufficient medical evidence to establish his claim. It advised him that OWCP would schedule a second opinion examination to address this deficiency.

In a letter dated November 6, 2018, the employing establishment challenged appellant's claim on the bases of timeliness, factual and medical fact of injury, performance of duty, and causal relationship.

On January 11, 2019 OWCP referred appellant to Dr. Edward Treyve, a Board-certified otolaryngologist, for otologic examination and audiological evaluation.

In a January 31, 2019 report, Dr. Treyve reviewed a statement of accepted facts (SOAF), the medical evidence of record, and examination findings, diagnosing bilateral sensorineural hearing loss and tinnitus. Appellant told Dr. Treyve that he had a rifle that he used recreationally since childhood every four to five months while wearing ear protection and a pistol that he shot twice a year with ear protection. Dr. Treyve noted that appellant had bilateral sensorineural

hearing loss that he believed was related to occupational noise exposure, recreational noise exposure, and presbycusis. He noted that appellant's hearing remained normal in his left ear through his course of employment and that he had not sustained occupational noise-induced hearing loss up until retirement in 1993. Dr. Treyve noted that appellant had high-frequency hearing loss in the right ear that was present from the start of his federal employment, which progressed over the course of employment, but noted that it was highly unlikely that it was related to occupational noise exposure, which was always fairly symmetric. He observed that deterioration in both ears since 1993 was likely in part related to occupational noise exposure, as well as recreational noise exposure and presbycusis. Dr. Treyve opined that appellant's audiometric testing demonstrated hearing levels that were in excess of what would be predicted on the basis of presbycusis alone and that workplace exposure was likely of significant intensity and duration as to potentially contribute to hearing loss. He indicated that recreational gunfire had contributed somewhat to appellant's hearing loss over the years. Dr. Treyve opined that appellant more likely than not sustained occupational noise exposure subsequent to his federal employment and that his asymmetric hearing loss throughout employment was likely related to undiagnosed medical causes or recreational exposure. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, an audiogram dated January 31, 2019 documented appellant's hearing as follows: 15, 25, 40, and 50 dBs in the left ear and 10, 15, 45, and 60 dBs in the right ear. Dr. Treyve checked a box indicating that appellant's sensorineural hearing loss was not due to noise exposure in his federal civilian employment.

In a letter dated February 27, 2019, OWCP requested that Dr. Treyve clarify whether he opined if any aspect of appellant's federal employment may have caused or contributed to appellant's hearing loss.

Dr. Treyve responded on February 27, 2019 noting that he did not believe that appellant's hearing loss in the right ear was only related to occupational noise-induced causes, as it was extremely unlikely that a noisy work environment like a shipyard would affect only one ear. He opined that hearing loss subsequent to his retirement in 1993 was related to subsequent occupational causes and presbycusis, and that he did not believe that any aspect of appellant's hearing loss was related to federal employment, as evidenced by entirely normal hearing in the left ear throughout the course of his federal employment.

By decision dated April 3, 2019, OWCP denied appellant's occupational disease claim for hearing loss.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ that an injury was sustained in the performance of duty as alleged, and

² *Id.*

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

that any disability or medical condition for which compensation is claimed is 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 upon a traumatic injury or an occupational disease.⁵

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; (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.⁶

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

ANALYSIS

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

Appellant did not submit medical evidence providing an opinion regarding the cause of his alleged binaural sensorineural hearing loss. However, OWCP referred appellant to Dr. Treyve for a second opinion evaluation regarding his hearing loss claim. Dr. Treyve concluded that appellant did not have sensorineural hearing loss due to his federal employment. In a report dated January 31, 2019 and a clarification letter dated February 27, 2019, he reviewed the medical record and a SOAF, related examination findings, and diagnosed bilateral sensorineural hearing loss and tinnitus. Dr. Treyve opined that appellant more likely than not sustained occupational noise exposure subsequent to his federal employment and that his asymmetric hearing loss throughout employment was likely related to undiagnosed medical causes or recreational exposure. He further opined that hearing loss subsequent to appellant's retirement in 1993 was related to subsequent occupational causes and presbycusis, noting that it was extremely unlikely that a noisy work

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

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

⁸ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

⁹ *Id.*; *Victor J. Woodhams*, *supra* note 6.

environment like a shipyard would affect only one ear, and that he did not believe that any aspect of appellant's hearing loss was related to federal employment, as evidenced by normal hearing in the left ear throughout the course of his federal employment.

The Board finds that Dr. Treyve's report dated January 31, 2019 and letter dated February 27, 2019 represent the weight of the medical evidence and establish that appellant's sensorineural hearing loss was not due to exposure to noise in the federal workplace.¹⁰ Dr. Treyve's opinion is based on a proper factual and medical history as he reviewed current audiometric 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 exposure to noise in his federal employment.

The Board thus finds that the medical evidence of record is insufficient to establish that he had sensorineural hearing loss causally related to the accepted factors of his federal employment. Appellant has not met his burden of proof.¹¹

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 met his burden of proof to establish binaural hearing loss causally related to the accepted factors of his federal employment.

¹⁰ See *T.K.*, Docket No. 19-0074 (issued May 15, 2019); *R.B.*, Docket No. 18-0720 (issued November 13, 2018); see *R.J.*, Docket No. 11-1644 (issued February 14, 2012); *J.L.*, Docket No. 07-1740 (issued December 20, 2007).

¹¹ See *T.K.*, *id.*; *J.B.*, Docket No. 17-0984 (issued July 11, 2018); *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 23, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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