

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 September 22, 2019 appellant, then a 54-year-old machinist, filed an occupational disease claim (Form CA-2) alleging that he developed binaural hearing loss and tinnitus due to factors of his federal employment. He asserted that the employing establishment failed to provide adequate hearing protection and that he eventually had to accept a lower position within the Federal Government to conserve his hearing. Appellant indicated that he first became aware of his hearing loss and tinnitus on December 4, 2018 and first realized its relation to his federal employment on December 8, 2018.³

In support of his claim, appellant submitted an official copy of his machinist position description and a May 13, 2018 request for personnel action (Standard Form (SF)-52).

Appellant also submitted hearing conservation data, including a reference audiogram dated November 13, 2017 and an audiogram dated February 13, 2019. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) a reference audiogram dated November 13, 2017 documented appellant's hearing as follows: 5, 0, 15, and 50 decibels (dBs) in the left ear and 0, 10, 5, and 40 dBs in the right ear. Using the same frequencies, a February 13, 2019 audiogram revealed appellant's hearing measured as: 15, 20, 25, and 60 dBs in the left ear and 15, 20, 10, and 50 dBs in the right ear.

In a development letter dated October 23, 2019, OWCP informed appellant of the deficiencies in his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for completion regarding noise exposure. OWCP afforded him 30 days to respond.

In an April 9, 2019 medical report, Dr. Richard Demaio, a Board-certified otolaryngologist, noted that appellant presented with binaural sensorineural hearing loss that began two years ago and had lasted three months. He indicated that appellant experienced difficulty discriminating voices, tinnitus, and hearing loss. Dr. Demaio also noted that appellant had been working in loud environment, eight hours a day, six days a week for 13 to 14 months. He indicated that although appellant wore small earplugs, he was not provided with the requested hearing protection. Dr. Demaio diagnosed binaural sensorineural hearing loss and tinnitus. He opined that appellant's diagnosed conditions were "most likely" due to work-related loud exposure.

In a November 3, 2019 response to OWCP's questionnaire, appellant indicated that since February 2019, he was employed as a metal forming machine operator at a different department. He noted that he currently had limited exposure to environmental noise. Appellant stated that he still experienced difficulty communicating with limited decibel levels. He noted his history of employment beginning 1982. Appellant stated that he worked as a machinist at the employing

³ The record indicates that appellant stopped working at the employing establishment in February 2019.

establishment from January 2018 to February 2019. He alleged that he was exposed to severe environmental noise at work including a firing block and the constant banging of pipes from the boiler/stream heating system, as well as exhaust fans that made an exceptional amount of noise. Appellant asserted that this contributed to the constant ringing in both ears for nine hours a day, six days a week. He noted that he had no hobbies involving exposure to loud noise.

On November 26, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. Michael Kortbus, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of any employment-related hearing loss.

In a January 7, 2020 report, Dr. Kortbus noted that appellant presented for hearing loss since the end of 2018, reporting that the left ear was worse than the right. He reviewed his history of audiogram testing, including the testing results from November 2017 and February 2019, and conducted a physical examination, which revealed normal findings. Dr. Kortbus noted that appellant demonstrated significant speech understanding, which was not typical for critical speech range mildly impaired. He diagnosed binaural sensorineural hearing loss and binaural non-pulsatile subjective tinnitus. Dr. Kortbus also reviewed appellant's audiogram performed that day, which demonstrated at 500, 1,000, 2,000, and 3,000 Hz losses of 40, 35, 35, and 60 dBs on the left, respectively and 40, 30, 35, and 60 dBs on the right, respectively. The audiogram was performed by an audiologist who documented timely calibration of testing equipment. In response to questions, Dr. Kortbus noted that the November 13, 2017 audiogram revealed moderate-to-moderately severe hearing loss at 3,000 Hz and above the left ear and mild-to-moderate loss at 3,000 Hz and above at the right ear. He indicated that the subsequent evaluation in February 2019 revealed decline in pure tone thresholds, bilaterally. When comparing the audiometric findings to those from the beginning of exposure, Dr. Kortbus indicated that appellant did not show sensorineural hearing loss that was in excess of what would be normally predicated on the basis of presbycusis. He opined that appellant's current hearing loss was consistent with age-related loss and checked a box indicating that his hearing loss was not due, in part or all, to noise exposure in his federal employment. Dr. Kortbus explained that the typical pattern for presbycusis was demonstrated and that the noise frequencies were not the only affected areas.

By decision dated February 25, 2020, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed hearing loss and his work-related noise exposure.

On February 28, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a March 11, 2020 letter, counsel asserted that appellant's exposure to loud noise in federal employment started in 2010. He also argued that Dr. Kortbus' rationale was illegible.⁴ A telephonic hearing was held on June 9, 2020.

In a June 27 and 30, 2020 statement, counsel again argued that OWCP's February 25, 2020 decision was based on an insufficiently rationalized report containing illegible handwriting, which

⁴ The Board notes that counsel also requested that Dr. Kortbus be subpoenaed to appear during the telephonic hearing. On May 5, 2020 OWCP denied counsel's request to subpoena Dr. Kortbus, finding that his testimony was not considered necessary when he had already provided a written report.

did not adequately explain why the extremely loud noise exposure over a decade of appellant's federal employment did not contribute to his hearing loss.

By decision dated July 15, 2020, OWCP's hearing representative affirmed the February 25, 2020 decision. She found that the weight of the medical opinion evidence with respect to the cause of appellant's hearing loss continued to rest with the well-rationalized opinion of Dr. Kortbus, OWCP's referral physician.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including 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,⁶ 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.⁷ 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.⁸

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.⁹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹⁰ 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.¹¹ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical

⁵ *Supra* note 2.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *W.M.*, Docket No. 14-1853 (issued May 13, 2020); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹²

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.

OWCP referred appellant to Dr. Kortbus for a second opinion evaluation regarding his hearing loss claim. In his January 7, 2020 report, Dr. Kortbus, he reviewed appellant's medical record and SOAF, related examination findings, and diagnosed binaural sensorineural hearing loss and binaural non-pulsatile subjective tinnitus. He opined that appellant's current hearing loss was consistent with age-related loss. Dr. Kortbus explained that the typical pattern of presbycusis was demonstrated in his audiometric findings. He concluded that appellant's binaural hearing loss was not due, in part or all, to noise exposure in his federal employment.

The Board has reviewed the opinion of Dr. Kortbus and notes that it has reliability, probative value, and convincing quality with respect to its conclusions regarding the relevant issue of the present case. He provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹³ Dr. Kortbus further provided medical rationale for his opinion by explaining that the nature of appellant's hearing loss did not support an employment-related cause, but rather showed a naturally progressing hearing loss due to age.

In support of his claim, appellant submitted an April 19, 2019 medical report from Dr. Demaio. Dr. Demaio diagnosed binaural sensorineural hearing loss and tinnitus. He opined that appellant's hearing loss and tinnitus were "most likely" due to work-related loud exposure. The Board has held that medical opinions that suggest that a condition was "likely" caused by work activities are speculative or equivocal in character and have limited probative value.¹⁴ As such, Dr. Demaio's report is insufficient to establish appellant's hearing loss claim.

As appellant has not submitted rationalized medical evidence establishing hearing loss due to factors of his federal employment, the Board finds that 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.

¹² *Id.*; *Victor J. Woodhams*, *supra* note 9.

¹³ *See J.W.*, Docket No. 18-0670 (issued September 11, 2018) (finding that a probative medical opinion must be based on a complete factual and medical background of the employee).

¹⁴ *See D.A.*, Docket No. 20-0951 (issued November 6, 2020).

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.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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