

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

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| S.O., Appellant                       | ) |                       |
|                                       | ) |                       |
| and                                   | ) |                       |
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| DEPARTMENT OF HOMELAND SECURITY,      | ) | Docket No. 24-0682    |
| U.S. IMMIGRATION AND CUSTOMS          | ) | Issued: July 15, 2024 |
| ENFORCEMENT, OFFICE OF                | ) |                       |
| ENFORCEMENT AND REMOVAL               | ) |                       |
| OPERATIONS, San Antonio, TX, Employer | ) |                       |
|                                       | ) |                       |

*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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On June 13, 2024 appellant filed a timely appeal from a June 4, 2024 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 a medical diagnosis in connection with the accepted factors of his federal employment.

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

## **FACTUAL HISTORY**

On March 18, 2024 appellant, then a 53-year-old deportation officer, filed an occupational disease claim (Form CA-2) alleging that he developed tinnitus and hearing loss due to factors of his federal employment, including loud noise exposure from tractor trailer traffic, intense aircraft noise, and noise due to firearms qualifications. He noted that he first became aware of his condition on February 9, 2024, and realized its relationship to his federal employment on March 6, 2024. Appellant did not stop work.

In a development letter dated March 26, 2024, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor and an explanation of appellant's work activities and noise exposure. It afforded him 60 days to submit the necessary evidence and the employing establishment was afforded 30 days.

Thereafter OWCP received a March 6, 2024 audiogram and report from D'Anne Wengeroth, a hearing instrument specialist, who reported normal hearing.

In a March 27, 2024 statement, the employing establishment concurred with appellant's allegations that he was exposed to loud noises and required to perform firearm qualifications.

On March 29, 2024 OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), for a second opinion examination with Dr. David M. Gleinser, a Board-certified otolaryngologist, to determine whether appellant's work-related noise exposure caused hearing loss and, if so, the extent and degree of hearing loss.

In a report dated April 23, 2024, Dr. Gleinser noted his review of the SOAF, and the results of appellant's audiological evaluation conducted that day. He completed OWCP's evaluation questionnaire and recounted appellant's occupational history, including noise exposure. Dr. Gleinser noted that appellant's prior audiometric data was not available. Appellant's current physical examination revealed normal canals and drums and possible right ear tinnitus. Dr. Gleinser reviewed an audiogram performed that day which demonstrated at 500, 1,000, 2,000, and 3,000 Hertz (Hz), losses of 20, 25, 25, and 25 decibels (dBs) in the right ear, respectively, and 20, 25, 25 and 30 dBs in the left ear, respectively. He diagnosed subjective tinnitus of the right ear and opined that appellant's tinnitus and borderline sensorineural hearing loss were not due to his employment. Dr. Gleinser concluded that appellant did not have a sensorineural hearing loss in excess of what would be normally predicted on the basis of presbycusis. He recommended that an internal auditory canal (IAC) magnetic resonance imaging (MRI) scan be performed.

A May 7, 2024 IAC MRI scan revealed no intracranial mass or acute abnormality and no internal auditory canal mass or abnormal enhancement.

By decision dated June 4, 2024, OWCP accepted that the employment exposure occurred as alleged, but denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the claimed employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<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 specific employment factors identified by the employee.<sup>8</sup>

## ANALYSIS

The Board finds that appellant has met his burden of proof to establish a medical diagnosis in connection with the accepted factors of his federal employment.

OWCP referred appellant to Dr. Gleinser for a second opinion evaluation regarding his hearing loss claim, to determine whether appellant had any hearing loss or tinnitus causally related to factors of his federal employment. In his April 23, 2024 report, Dr. Gleinser related that

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

<sup>3</sup> *See S.B.*, Docket No. 22-1346 (issued June 1, 2023); *D.D.*, Docket No. 19-1715 (issued December 3, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *Y.G.*, Docket No. 20-0688 (issued November 13, 2020); *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> *J.C.*, Docket No. 23-0933 (issued December 4, 2023); *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *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).

<sup>6</sup> *J.C., id.*; *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>7</sup> *J.C., id.*; *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>8</sup> *J.C., id.*; *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

appellant had undergone an audiometric evaluation that day which demonstrated losses at 500, 1,000, 2,000, and 3,000 Hz, of 20, 25, 25, and 25 dBs in the right ear, respectively, and 20, 25, 25, and 30 dBs in the left ear, respectively. He diagnosed subjective right ear tinnitus and noted audiogram results consistent with borderline sensorineural hearing loss. The evidence of record therefore does establish diagnoses of sensorineural hearing loss and tinnitus. As the medical evidence of record establishes a diagnosed medical condition, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.<sup>9</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that appellant has met his burden of proof to establish a medical diagnosis in connection with the accepted factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 4, 2024 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: July 15, 2024  
Washington, DC

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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> See *J.M.*, Docket No. 24-0524 (issued June 18, 2024); *S.R.*, Docket No. 22-0453 (issued March 2, 2023); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).