

his federal employment. He noted that he first became aware of his hearing loss and realized its relation to his federal employment on April 10, 2000. Appellant retired on January 2, 2010. On the reverse side of the form, and in a separate letter dated May 13, 2024, the employing establishment controverted the claim.

In support of his claim, appellant submitted an employing establishment audiogram performed as part of a hearing conservation program dated April 2, 2001, which revealed the following decibel (dB) losses at 500, 1,000, 2,000, and 3,000 Hertz (Hz): 5, 0, 5, and 5 for the right ear and 10, 5, 15, and 20 for the left ear, respectively. He also submitted a checklist for filing a federal occupational hearing loss claim dated February 21, 2023. Appellant noted that he worked for the employing establishment as an electronics technician from 1975 to 1981 in North Island, San Diego, CA, where he was exposed to noise from removal and overhaul of equipment onboard aircraft carriers, and from 1981 to 2010 in Keyport, WA, where he was exposed to noise from helicopters, hydraulics, and propeller aircraft. He also submitted a November 11, 2022 audiometric evaluation reflecting binaural hearing loss.

In a May 14, 2024 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 60 days to respond. In a letter of even date, it requested additional information from the employing establishment, including comments from a knowledgeable supervisor on the accuracy of the employee's statements, and factual and medical evidence related to appellant's employment-related noise exposure in the course of his federal employment. OWCP afforded the employing establishment 30 days to respond.

In a June 4, 2024 response to OWCP's development questionnaire, appellant indicated that he was "exposed to constant noise at Keyport and San Diego" and that he first noticed his hearing loss as a result of April 10, 2000 hearing conservation data, which revealed a significant threshold shift and required him to return for further testing. He also submitted audiogram results dated March 23, 1981 through April 9, 1986.

In further support of his claim, appellant submitted an employing establishment audiogram performed as part of a hearing conservation program dated April 10, 2000, with a reference audiogram from April 18, 1988. The April 18, 1988 reference audiogram revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 0, 0, 0, and 0 for the right ear and 5, 0, 0, and 5 for the left ear, respectively. The April 10, 2000 audiogram revealed the following dB losses at 500, 1,000, 2,000, and 3,000 Hz: 5, 0, 5, and 10 for the right ear and 10, 5, 10, and 20 for the left ear, respectively. The April 10, 2000 audiogram also contained remarks from the audiologist that there had been a significant threshold shift as compared with the April 18, 1988 reference audiogram. Further testing dated April 11 and 12, 2000 revealed similar findings and remarks from the audiologist that there had been a significant threshold shift since April 18, 1988.

In a June 12, 2024 response to OWCP's development questionnaire, the employing establishment indicated that it had a comprehensive hearing conservation program and that while participating in the program, employees were monitored for any significant shifts in their hearing through the requirement of an annual audiogram.

On July 15, 2024 OWCP referred appellant, along with a statement of accepted facts (SOAF) and a copy of the medical record, to Dr. Edward Treyve, a Board-certified otolaryngologist, for a second opinion evaluation to determine the nature and extent of appellant's employment-related conditions.

In an August 16, 2024 medical report, Dr. Treyve reviewed the SOAF and the medical evidence of record. He indicated that appellant related a history of working in "quiet spaces" at North Island from 1975 to 1981, with the exception of two flights on a double engine propeller plane and occasional exposure to workers using needle guns and chipping guns on an aircraft carrier. Dr. Treyve also noted that appellant related that he worked at Keyport from 1981 until 2010, mostly in a "quiet office environment" doing computer work, except that between 1981 and 1990, he traveled in a boat or by helicopter while wearing a headset to an offshore base where he would track aircraft with a hydraulic drive system inside a dome without ear protection. After 1990, appellant worked "in an office setting without noise exposure." Dr. Treyve noted that appellant also hunted recreationally with various rifles, with and without hearing protection, two to three times per month, five months per year, from approximately 1984 until 2014. He indicated that appellant's prior audiograms revealed entirely normal hearing in the right ear and a mild loss noted at 6,000 Hz in the left ear in 1981, which resolved to normal hearing levels in both ears in 1982; normal hearing in the left ear at all frequencies in 2000 and mild loss at 4,000 Hz in 2001; and normal hearing levels in the right ear between 1981 and 2001. Dr. Treyve also noted that the November 11, 2022 audiometric evaluation revealed a binaural mild-to-severe hearing loss. He reviewed an audiogram performed on August 15, 2024 by Dustin Spillman, an audiologist, using an audiometer last calibrated on March 11, 2024, which demonstrated at 500, 1,000, 2,000, and 3,000 Hz, losses of 10, 5, 20, and 40 dBs in the right ear, respectively, and 15, 0, 15, and 50 dBs in the left ear, respectively. Dr. Treyve diagnosed bilateral sensorineural hearing loss. He opined that the hearing loss was not due to noise exposure encountered in appellant's federal civilian employment. Dr. Treyve explained that appellant did show sensorineural hearing loss in excess of what would be predicted on the basis of presbycusis alone, but that his "recreational noise exposure and not occupational noise exposure has contributed significantly to his hearing loss." He indicated that the workplace exposures were not of sufficient intensity and duration to have contributed to hearing loss, noting that "audiometry in the right ear remained normal through 2001 with a mild loss at 4,000 Hz in the left ear in 2001" and that "after 1990, [appellant] had no occupational noise exposure." Dr. Treyve opined that appellant's recreational gunfire exposure was the source for much of his hearing loss and the remainder was related to presbycusis.

By decision dated August 27, 2024, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed binaural hearing loss was causally related to the accepted workplace noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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

² *Id.*

limitation of FECA,³ 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.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) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁶

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁷ 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 the specific employment factors identified by the claimant.⁸

ANALYSIS

The Board finds this case not in posture for decision.

OWCP referred appellant to Dr. Treyve for a second opinion evaluation regarding his hearing loss claim, to determine whether appellant's documented hearing loss was causally related to factors of his federal employment. In his August 16, 2024 report, Dr. Treyve diagnosed bilateral sensorineural hearing loss as appellant's hearing loss was in excess of what would be predicted on the basis of age-related hearing loss (presbycusis) noting that the workplace exposures were not of sufficient intensity and duration to have contributed to hearing loss. He opined that the diagnosis was more likely than not unrelated to noise exposure encountered in appellant's employment. Dr. Treyve further opined that appellant's recreational noise exposure, and not occupational noise exposure, "had contributed significantly to his hearing loss." Dr. Treyve, however, failed to

³ *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).

⁴ *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).

⁵ *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).

⁶ *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).

⁷ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

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

explain sufficiently explain whether appellant's accepted employment exposure from 1981 to 2010 also contributed to his hearing loss. An employee is not required to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship.⁹ If work-related exposures caused, aggravated, or accelerated appellant's condition, it is compensable.¹⁰

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹¹ It has an obligation to see that justice is done.¹² As it undertook development of the evidence by referring appellant to Dr. Treyve, it had the duty to secure a sufficiently-rationalized report based on an accurate factual and medical background.¹³

Accordingly, this case shall be remanded to OWCP for further development of the medical evidence. On remand OWCP shall request that Dr. Treyve clarify his opinion as to whether the accepted work factors in any way contributed to appellant's diagnosed hearing loss. Alternatively, if Dr. Treyve is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant to a new second opinion physician.¹⁴ After this and other such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that this case is not in posture for decision.

⁹ See *M.N.*, Docket No. 17-1729 (issued June 22, 2018); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁰ *C.H.*, Docket No. 19-1315 (issued March 16, 2020); *J.L.*, Docket No. 17-0782 (issued August 7, 2017); *H.C.*, Docket No. 16-0740 (issued June 22, 2016).

¹¹ See *M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

¹² See *A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

¹³ See *G.T.*, Docket No. 21-0170 (issued September 29, 2021); *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹⁴ *J.F.*, Docket No. 23-0963 (issued December 8, 2023); *S.G.*, Docket No. 22-0014 (issued November 3, 2022); *G.T.*, *id.*; see also *D.L.*, Docket No. 20-0886 (issued November 9, 2021).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2024 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 20, 2024
Washington, DC

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

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

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