

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

L.B., Appellant

and

**DEPARTMENT OF THE NAVY, MARE
ISLAND NAVAL SHIPYARD, Vallejo, CA,
Employer**

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**Docket No. 12-1580
Issued: December 13, 2012**

Appearances:

Janet Folk, for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 17, 2012 appellant, through his representative, filed a timely appeal from an April 16, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying reimbursement for binaural hearing aids. 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 OWCP properly denied authorization and reimbursement for binaural hearing aids.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 9, 1981 appellant, then a 54-year-old machinist cutter grinder, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hearing loss due to employment-related noise exposure. He first became aware of his condition on June 12, 1968 and of its relationship to his employment on July 12, 1976. Appellant worked as a machinist for the Mare Island Naval Shipyard intermittently beginning January 3, 1944.

In a February 22, 1982 otologic examination report, Dr. Robert D. Urrea, a Board-certified otolaryngologist, reported that appellant began using earplugs at his employment about 10 years prior and noticed a decrease in hearing over the last 3 years accompanied with tinnitus. Upon review of a September 17, 1981 audiogram, he diagnosed bilateral high frequency sensorineural hearing loss, more pronounced on the left than the right due to work-related noise exposure. Dr. Urrea provided no opinion on hearing aids.

On April 15, 1982 Dr. T.B. Albee, an OWCP medical adviser, reviewed Dr. Urrea's February 22, 1982 otologic examination report. He agreed that appellant's bilateral high frequency neurosensory hearing loss was due to occupational noise exposure. Dr. Albee applied the audiometric data to OWCP's standard for evaluating hearing loss and determined that appellant had a 0 percent (no) monaural hearing loss in the right ear and a 2.4 percent monaural hearing loss in the left ear. He checked the box marked "no" as to whether hearing aids should be authorized.

By decision dated April 19, 1982, OWCP accepted appellant's claim for bilateral hearing loss based on exposure between January 3, 1944 and February 8, 1982.

By decision dated June 15, 1982, OWCP granted appellant a schedule award for two percent permanent loss of hearing of the left ear. The award covered the period February 8 to 15, 1982. OWCP closed appellant's case on December 8, 1982.

By letter dated May 16, 2011, appellant requested that his case be reopened so that he could request new hearing aids. By letter dated June 13, 2011, his representative requested hearing aids, noting that appellant's hearing problem had become serious and was affecting his quality of life.

By letter dated July 18, 2011, OWCP requested additional factual and medical evidence. It requested a date of purchase for any hearing aids that OWCP may have purchased in the past, a detailed medical report which explained the need for new hearing aids and three cost estimates from different hearing aid providers.

By letter dated August 25, 2011, appellant's representative stated that appellant was unable to participate in conversation or daily activities without the use of hearing aids. Although appellant could have received hearing aids from OWCP in the past, there was no knowledge or account of hearing aids ever being approved. Appellant's representative submitted additional evidence in support of his claim.

In an August 22, 2011 report, Marina Mulvey, a Doctor of Audiology, reported that appellant was a good candidate for binaural hearing aids with symmetrical hearing loss.

By letter dated August 9, 2011, Dr. Larry Marianella, a treating physician, reported that appellant was severely hearing impaired due in part to noise trauma from his previous occupation as a machinist. He noted that appellant required the use of bilateral hearing aids to help him with activities of daily living and that his current aids were damaged from overuse.

By decision dated April 16, 2012, OWCP denied appellant's request for reimbursement of binaural hearing in the amount of \$3,490.00. It found that the medical evidence was insufficient to establish that the need for hearing aids was causally related to the accepted injury.

LEGAL PRECEDENT

Section 8103 of FECA² provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree of the periods of any disability or aid in lessening the amount of any monthly compensation.³ These services, appliances and supplies shall be furnished by or on the order of the United States medical officers and hospital or at the employee's option by or on the order of physicians and hospitals designated or approved by the Secretary.⁴ The employee may be furnished necessary and reasonable transportation and expenses incidental to the securing of such services, appliances and supplies.⁵ In interpreting this section 8103, the Board has recognized that OWCP has broad discretion in approving services provided under FECA. The only limitation on OWCP's authority is that of reasonableness.⁶

OWCP must therefore exercise discretion in determining whether the particular service, appliance or supply is likely to affect the purposes specified in FECA.⁷ Following medical evaluation of a claim, if the hearing loss is determined to be nonratable for schedule award purposes, other benefits such as hearing aids may still be payable if any employment-related hearing loss exists.⁸

To be entitled to reimbursement of medical expenses, a claimant has the burden of establishing that the expenditures were incurred for treatment of the effects of an employment-

² 5 U.S.C. § 8103.

³ *Id.*

⁴ *Daniel J. Perea*, 42 ECAB 214 (1990).

⁵ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

⁶ *D.C.*, Docket No. 06-2161 (issued July 13, 2007).

⁷ *Supra* note 2.

⁸ *See F.D.*, Docket No. 10-1175 (issued January 4, 2011); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(d)(2) (October 1990).

related injury or condition.⁹ Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁰

ANALYSIS

The Board finds that OWCP properly denied authorization and reimbursement of appellant's hearing aids.

OWCP accepted appellant's claim for bilateral hearing loss as a result of his federal employment duties commencing January 3, 1944. By decision dated June 15, 1982, it granted a schedule award for two percent permanent loss of hearing of the left ear. The case was closed on December 8, 1982. On May 16, 2011 appellant requested reimbursement for hearing aids. The Board finds that he failed to establish that his need for hearing aids is causally related to his occupational noise exposure.

In a February 22, 1982 otologic examination report, Dr. Urrea diagnosed bilateral high frequency sensorineural hearing loss, more pronounced on the left than the right due to work-related noise exposure. He provided no opinion on hearing aids. Dr. Urrea's report is of no probative value on the need for hearing aids as requested in 2011.

On April 15, 1982 Dr. Albee, an OWCP medical adviser, reviewed Dr. Urrea's February 22, 1982 otologic examination report and agreed that appellant's bilateral high frequency neurosensory hearing loss was due to occupational noise exposure. He determined that appellant had a 0 percent monaural hearing loss in the right ear and a 2.4 percent monaural hearing loss in the left ear. Dr. Albee noted that hearing aids were not authorized. His report does not establish that appellant required the use of hearing aids as a result of his federal employment noise exposure.¹¹

As noted, hearing aids and other medical benefits may be payable if an employment-related hearing loss exists. OWCP is obligated to pay for medical treatment of a work-related injury but the employee has the burden of establishing that the expenditure is incurred for treatment of the effects of such injury. Proof of causal relationship must include supporting rationalized medical evidence.¹² In the present case, appellant did not meet his burden.

The record does not establish that appellant sustained additional employment-related hearing loss following his 1982 schedule award for two percent monaural hearing loss. The record does not establish that OWCP has ever authorized hearing aids. In 2011 appellant stated that he required new hearing aids. In support of his request for hearing aids, he submitted a medical report from Dr. Marianella. In the August 9, 2011 report, Dr. Marianella recommended the use of hearing aids to help appellant with activities of daily living. He noted that appellant

⁹ *T.F.*, Docket No. 06-1186 (issued October 19, 2006).

¹⁰ *Cathy B. Millin*, 51 ECAB 331 (2000).

¹¹ *J.G.*, Docket No. 12-583 (issued July 25, 2012).

¹² *See Charlie A. Penney*, Docket No. 04-1432 (issued October 5, 2004).

was severely hearing impaired due in part to noise trauma from his previous occupation as a machinist at Mare Island. Dr. Marianella's brief comment did not offer a clear, rationalized explanation of how hearing aids were medically necessary due to the accepted hearing loss. There is no medical evidence that appellant claimed any additional permanent impairment due to hearing loss since his 1982 schedule award.¹³ There is no report from a physician addressing how appellant's hearing in 2011, some 29 years after the prior adjudication of his claim, was contributed to or progressed due to the accepted noise exposure in this case. In the absence of rationalized medical opinion evidence, appellant did not meet his burden of proof.¹⁴

There is no rationalized medical evidence supporting that appellant requires the use of hearing aids causally related to his occupational noise exposure. In an August 22, 2011 report, Dr. Mulvey, an audiologist, reported that appellant was a good candidate for binaural hearing aids with symmetrical hearing loss. The Board notes that audiologists are not included among the healthcare professionals defined as a physician under FECA.¹⁵ Thus, Dr. Mulvey's opinion is of no probative medical value.¹⁶

The Board finds that OWCP properly denied appellant's request for reimbursement of hearing aids. Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that OWCP properly denied authorization and reimbursement of hearing aids.

¹³ *J.Y.*, Docket No. 11-971 (issued November 17, 2011).

¹⁴ *N.P.*, Docket No. 11-1648 (issued March 1, 2012).

¹⁵ 5 U.S.C. § 8102(2) of FECA provides as follows: (2) physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law.

¹⁶ *R.V.*, Docket No. 12-248 (issued June 6, 2012); *Thomas O. Bouis*, 57 ECAB 602 (2006).

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board