

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY W. AUSTIN and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION, San Diego, Calif.

*Docket No. 97-1563; Submitted on the Record;  
Issued February 19, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained damage to his ear drum due to factors of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet his burden of proof in establishing that he sustained damage to his ear drum due to factors of his federal employment.

Appellant filed a claim for occupational disease on June 23, 1995 alleging that he developed chronic ear infections due to factors of his federal employment.<sup>1</sup> The Office of Workers' Compensation Programs requested additional factual and medical evidence on December 10, 1996. By decision dated February 13, 1997, the Office denied appellant's claim finding that he failed to submit the necessary medical evidence to establish a causal relationship between his factors of employment and his diagnosed condition.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

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<sup>1</sup> Appellant also submitted a notice of traumatic injury. However, narrative statements from appellant indicate that his injury occurred over a period of time greater than one work shift. Therefore, his claim is most appropriately pursued as an occupational disease.

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.<sup>2</sup>

Appellant attributed his condition to a work-related flight when he had a sinus infection and a temporary duty station with tropical downpours. He stated that he developed an ear infection within two weeks of the airplane flight and wet stay in Glynco, Georgia for firearms training. The Office accepted that these factors occurred as alleged and proceeded to consider the medical evidence.

In support of his claim, appellant submitted a report dated June 8, 1995, from Dr. Christopher D. Rucker, a Board-certified otolaryngologist, who noted that appellant developed right ear pain one month after an airline flight. Dr. Rucker stated that there was no evidence that appellant's ear pain was due to the flight.<sup>3</sup> On October 16, 1995 Dr. William M. Shapiro, a physician Board-certified in emergency medicine, noted appellant's allegations that his ear condition was related to his work and diagnosed recurrent right earache. Dr. Shapiro stated that the cause of appellant's discomfort was unclear. Dr. Richard D. Fantozzi, a Board-certified otolaryngologist, examined appellant on October 19, 1995 and found that his physical examination was normal. Dr. Fantozzi noted that appellant flew to Georgia for training while he had a sinus infection. In a report dated December 22, 1995, he stated that appellant could be experiencing rhinitis from working at the border station, but that no treatment was advised. Appellant submitted a form report from a physician whose signature is illegible finding a normal ear drum and canal. The physician diagnosed resolved otitis externa and in response to the question of whether the condition was caused by employment stated, "unknown."

These reports do not provide an opinion on the causal relationship between appellant's right ear condition and the alleged factors of employment. The reports are, therefore, not sufficient to meet appellant's burden of proof. The remainder of the medical evidence of record did not provide any history of injury or discussion of employment factors and is insufficient to meet appellant's burden of proof. As appellant did not submit the necessary medical evidence signed by a physician noting the alleged factors of employment, providing a diagnosis and providing an opinion on the causal relationship between appellant's employment and his condition, he failed to meet his burden of proof.

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<sup>2</sup> *Lourdes Harris*, 45 ECAB 545, 547 (1994).

<sup>3</sup> An audiogram report dated July 7, 1995 noted that tympanometry demonstrated hypercompliance in the right ear with acoustic reflex screen present. This report is not signed by a physician or accompanied by a physician's report. Therefore it does not constitute medical evidence and is insufficient to meet appellant's burden of proof. *Arnold A. Alley*, 44 ECAB 912 (1993).

The decision of the Office of Workers' Compensation Programs dated February 13, 1997 is hereby affirmed.

Dated, Washington, D.C.  
February 19, 1999

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member