

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALVIN L. DOWNS and TENNESSE VALLEY AUTHORITY,
SHAWNEE FOSSIL PLANT, Paducah, KY

*Docket No. 02-854; Submitted on the Record;
Issued September 4, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant sustained noise-induced hearing loss causally related to factors of his federal employment.

On January 17, 2001 appellant, then a 53-year-old technical service analyst, filed a notice of occupational disease and claim for compensation, alleging that he sustained bilateral hearing loss as a result of exposure to hazardous noise in the performance of duty in his federal employment. In an attachment to his CA-1 form, appellant stated that he worked at test facility powerhouses running chemical and mechanical tests on various equipment during his career.¹ Appellant indicated that he first became aware of his hearing condition on January 11, 2001, when he received the results of a hearing test.

At the request of the Office of Workers' Compensation Programs, the employing establishment submitted personnel records and copies of audiograms dated February 28, 1972, September 26, 1975, March 15, 1978, June 3, 1981, June 27, 1984, September 15, 1986, April 1, 1993, December 14, 1994, January 22, 1996, November 13, 1997, January 4, 1999 and December 6, 2000.

The Office referred appellant along with a statement of accepted facts to Dr. Phillip Klapper, a Board-certified otolaryngologist, for a complete audiologic and otologic evaluation and review of medical records. In conjunction with that evaluation, an audiogram was obtained on October 19, 2001. The losses at the frequencies of 500, 1,000, 2,000 and 3,000 were recorded for the right ear as 10, 5, 10 and 20 decibels respectively and for the left ear as 15, 10, 20 and 35 decibels respectively.

¹ The employing establishment alleged that appellant only worked in the power house areas two hours a day and that the rest of his time was spent in the laboratory. It was also noted that the powerhouse areas were 71 to 82 decibels, which were allegedly "well under the OSHA standard and not sufficient to cause hearing loss."

In his report of October 19, 2001, Dr. Klapper noted that appellant shot guns while hunting geese. His work history was provided on the statement of accepted facts. Appellant stated that the October 19, 2001 audiogram showed bilateral high frequency nerve hearing loss. He further added, “[o]ccupational noise exposure not sufficient to cause hearing loss. Gunfire noise could cause this amount of hearing loss.” Dr. Klapper’s diagnosis was “[b]ilateral high [frequency] nerve hearing loss two [percent] to gunfire.” The physician recommended that appellant wear ear protection from noise.

In a decision dated November 7, 2001, the Office did not accept that appellant sustained bilateral hearing loss due to his federal employment.

The Board finds that appellant failed to establish that he has noise-induced hearing loss causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To establish that an injury was sustained in the performance of duty in on 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.³ The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.⁴ The opinion of the physician must be based on a complete factual and medical background of the claimant, 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.⁵

² *Doyle W. Richetts*, 48 ECAB 167 (1996).

³ *Dennis M. Mascarenas*, 49 ECAB 215 (1997); *Ruth Seuell*, 48 ECAB 188 (1996).

⁴ *See Id.*

⁵ *Dennis M. Mascarenas*, *supra* note 3.

In this case, the Office sent appellant for a second opinion evaluation with Dr. Klapper, who had a full and accurate history of his work-related noise exposure based on the statement of facts, a copy of appellant's prior audiograms and the results of the October 19, 2001 audiogram. Dr. Klapper opined that although appellant does have evidence of a bilateral high frequency nerve hearing loss, he was unable to attribute his hearing loss to his employment. The physician did not consider appellant's occupational noise exposure to be sufficient to cause hearing loss of the nature shown on the October 19, 2001 audiogram. He suggested that appellant's hearing loss was consistent with exposure to gunfire. Dr. Klapper noted that appellant would shoot guns while hunting geese in his spare time. Thus, in the absence of a rationalized opinion establishing a causal relationship between appellant's diagnosed hearing loss and factors of his employment, the Office properly denied compensation.

Accordingly, the decision of the Office of Workers' Compensation Programs dated November 7, 2001 is hereby affirmed.

Dated, Washington, DC
September 4, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member