

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

KLAUS P. LINDNER, Appellant

and

**DEPARTMENT OF THE ARMY, CORPS OF
ENGINEERS, Omaha, NE, Employer**

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**Docket No. 05-1205
Issued: September 12, 2005**

Appearances:
Klaus P. Lindner, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On May 9, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated March 9, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a hearing loss in the performance of duty.

FACTUAL HISTORY

On January 20, 2005 appellant, then a 55-year-old architect, filed a traumatic injury claim alleging that on August 2, 2004 while he was deployed at Bay Ji power plant in Iraq he sustained a hearing loss from exposure to noise from an accidental weapon discharge and also from high decibel sound levels. Appellant did not stop work.

By letter dated February 8, 2005, the Office asked appellant to submit additional information including a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed hearing loss. No additional evidence was submitted.

In a decision dated March 9, 2005, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the factors of employment as required by the Federal Employees' Compensation Act.¹

LEGAL PRECEDENT

An employee seeking benefits under the 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 filed within the applicable time limitation 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁴

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. 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 The weight of the medical evidence is determined by its reliability,

¹ 5 U.S.C. §§ 8101-8193.

² *Gary J. Watling*, 52 ECAB 357 (2001).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Id.*

⁵ *Leslie C. Moore*, 52 ECAB 132 (2000).

its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁶

ANALYSIS

Appellant alleged that on August 2, 2004, while he was deployed at Bay Ji power plant in Iraq, he sustained a hearing loss from exposure to noise from an accidental weapon discharge and also from high decibel sound levels. The Board initially notes that there is no dispute that the incident occurred on August 2, 2004 as alleged.

The Board finds, however, that there is no medical evidence submitted to establish that appellant sustained a hearing loss causally related to his employment duties. In a letter dated February 8, 2005, the Office requested that appellant submit additional evidence in support of his claim, specifically a comprehensive medical report from his treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed hearing loss. However, no additional evidence was submitted prior to the Office decision of March 9, 2005.

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁷ 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.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his or her condition was caused, precipitated or aggravated by his or her employment is sufficient to establish causal relationship.⁸

CONCLUSION

The Board therefore finds that appellant failed to meet his burden of proof in establishing that he sustained an employment-related injury in the performance of duty.

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

⁷ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁸ *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board