

witness and operations manager, stated on appellant's claim form that a review of the voice recording revealed an unknown tone present on the frequency. He also stated that he received notice of appellant's alleged injury on September 4, 2006.

By letter dated October 4, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the additional factual and medical evidence he needed to submit to establish his claim.

In an October 14, 2006 letter, appellant further described the September 4, 2006 incident. Around 1917 local time, he heard a triple clapping sound in his left ear where his headset was located. Appellant immediately lost hearing in the ear for two to five seconds and saw that frequency 322.3 was the only one flashing which indicated sound. He stated that his hearing returned and he continued to work but noticed that he had a severe headache on the left side of his head. Appellant's supervisor gave him Tylenol for his headache. He related that he stopped performing his air traffic duties when his supervisor asked him to train someone. When appellant moved over to the trainer position and engaged in conversation with his coworkers, he realized that his voice sounded as if he were still talking into his headset. He stated that he then knew something was wrong. Appellant requested a traumatic injury claim form from his supervisor who also gave him an authorization for examination and/or treatment (Form CA-16). On the next day, he sought medical treatment from his primary care physician who referred him to Dr. R. Gregory Weaver, a Board-certified otolaryngologist. Appellant described his symptoms. He stated that an audiogram performed for Dr. Weaver revealed that his previously excellent hearing in both ears was only excellent in his right ear.

Dr. Weaver's September 28, 2006 report found no abnormalities. He recommended further testing. In a September 11, 2006 report, Dr. Weaver referred to the findings of an audiogram of the same date. The audiogram found that appellant sustained ear pain and tinnitus. Dr. Weaver's October 13, 2006 report found that an audiogram and magnetic resonance imaging (MRI) scan of appellant's brain were normal.

In a September 15, 2006 medical report, Dr. Dominick S. Zito, an employing establishment physician, stated that appellant was required to wear corrective lenses for distant vision while performing his work duties. A September 6, 2006 prescription note which contained an illegible signature, stated that appellant was unable to work until he was cleared by an ear, nose and throat (ENT) specialist with whom he had an appointment on September 11, 2006.

On November 1, 2006 the Office received a September 28, 2006 letter from Barbara Jo Cogliandro, an air traffic manager, who contended that the September 4, 2006 incident did not occur. Ms. Cogliandro reviewed an audiotape which did not reveal the presence of a tone as alleged by appellant. She related that there was a "bing" tone at the beginning of the recording. This was a standard tone for a position relief briefing when controllers were changing positions. Ms. Cogliandro contended that the physician who treated appellant expressed doubt that his condition was caused by the alleged employment incident.

In a September 4, 2006 memorandum, Mr. Hawrysko stated that on September 4, 2006 an operations supervisor advised him of the alleged employment incident. He stated that he

reviewed the voice recording which revealed normal air traffic control communication. At the 2317Z frequency level, he noted an unidentified tone/clicking but it was not considered to be out of the ordinary. A representative from the "SOC" advised Mr. Hawrysko that the frequency was normal and that there were no tones dispersed on the frequency during the period in question. Appellant advised Mr. Hawrysko that he was experiencing pain and discomfort in his left ear which he believed was the result of the tone that he received at the 2317Z frequency level while working the "OJAY" position. Mr. Hawrysko stated that he reviewed the voice recording a second time and other than the tone/clicking present at 2317Z, the entire session of communications was normal.

By decision dated November 3, 2006, the Office denied appellant's claim on the grounds that he did not establish that the claimed employment incident occurred at the time, place and in the manner alleged and that he sustained a medical condition caused by the alleged incident. On November 27, 2006 appellant requested an oral hearing before an Office hearing representative.

An October 18, 2006 form report and referral note of Dr. Richard E. Gardner, a Board-certified otolaryngologist, stated that appellant sustained tinnitus and vertigo. Dr. Gardner's October 18, 2006 narrative report provided a history that appellant experienced sudden hearing loss with onset of tinnitus and vertigo due to trauma to the left ear while working at the employing establishment. He stated that appellant knew there was lightning in the area and that he heard a crackle or popping in his left ear over his headphones. Dr. Gardner related that he understood that a review of the audiotape revealed a single pop. He reported normal findings on physical examination. Dr. Gardner opined that appellant presented with subjective difficulty after an event at work and he reported a change in his hearing with ongoing tinnitus and episodic vertigo. He ordered testing of appellant's inner ear. In an October 25, 2006 note, Dr. Gardner opined that appellant's tinnitus may never resolve.

By decision dated January 3, 2007, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an injury causally related to factors of his federal employment. The Office stated that this decision superseded its November 3, 2006 decision because all of the medical evidence submitted by appellant was not considered prior to the issuance of the November 3, 2006 decision.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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

¹ Following the issuance of the Office's January 3, 2007 decision, appellant submitted additional evidence to the Office. He also submitted evidence with his appeal to the Board. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴ Establishing that a federal employee has sustained a traumatic injury in the performance of duty involves two components. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence to establish that the employment incident caused a personal injury.⁶ The term injury as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.⁷

An employee who claims benefits under the Act has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁸ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁹ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹⁰ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹¹ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁵ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁷ *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

⁸ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁹ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

¹⁰ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹² *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

ANALYSIS

Appellant alleged that he sustained hearing loss in his left ear on September 4, 2006 due to exposure to loud noise while working as an air traffic control specialist for the employing establishment. The Office initially denied appellant's claim on November 3, 2006 finding that he failed to establish that the injury occurred at the time and place and in the manner alleged. By decision dated January 3, 2007, the Office vacated its November 3, 2006 finding and denied appellant's claim on the grounds that he failed to establish that the accepted employment incident, exposure to noise, resulted in an injury. Thus, there is no dispute that appellant was exposed to noise in his federal employment on September 4, 2006 while in the performance of duty as alleged.

The Board, however, finds that appellant did not submit sufficient medical evidence to establish that his left ear hearing loss and tinnitus were caused by the accepted employment factor. As noted, Dr. Weaver's September 11, 2006 report found that appellant sustained ear pain and tinnitus based on an audiogram of the same date.¹³ In an October 18, 2006 form report and referral note, Dr. Gardner found that appellant sustained tinnitus and vertigo. He opined in an October 25, 2006 note that appellant's tinnitus may never resolve. Neither Dr. Weaver nor Dr. Gardner discussed how the diagnosed conditions were caused or aggravated by appellant's employment-related noise exposure. The Board has held that a medical opinion not fortified by medical rationale is of little probative value.¹⁴ The reports and notes of Dr. Weaver and Dr. Gardner are insufficient to establish appellant's claim.

Dr. Weaver's September 28, 2006 report found no abnormalities. In an October 13, 2006 report, he stated that appellant's audiogram and MRI scan of the brain were normal. Dr. Weaver did not opine that appellant sustained a medical condition causally related to the accepted employment incident as supported by objective findings. The Board finds that Dr. Weaver's reports are insufficient to establish appellant's claim.

Similarly, Dr. Gardner's October 18, 2006 narrative report is insufficient to establish appellant's claim. As noted, in this report, Dr. Gardner provided a history of the September 4, 2006 employment incident. He also reported normal findings on physical examination. Dr. Gardner opined that appellant presented with subjective difficulty after an event at work and he reported a change in his hearing with ongoing tinnitus and episodic vertigo. Dr. Gardner did not opine that appellant's tinnitus and vertigo were caused by the accepted employment incident of September 4, 2006 as supported by objective findings. Therefore, his report is insufficient to establish appellant's claim.

¹³ Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by the Office. *See* 20 C.F.R. § 10.300(c). The record is silent as to whether the Office paid for the cost of appellant's examination or treatment for the period noted on the form.

¹⁴ *Michael E. Smith*, 50 ECAB 313 (1999); *Annie L. Billingsley*, 50 ECAB 210 (1998).

Dr. Zito's September 15, 2006 report stated that appellant was required to wear corrective lenses for distant vision while performing his work duties. This evidence is not relevant to appellant's claim as Dr. Zito did not provide a reasoned medical opinion on the issue of whether appellant's left ear hearing loss and tinnitus were caused by the September 4, 2006 employment incident. The Board finds that Dr. Zito's report is not sufficient to establish appellant's claim.

As noted, a September 6, 2006 prescription note found that appellant was totally disabled until he was cleared by an ENT specialist who he was scheduled to see on September 11, 2006. This note did not address whether appellant's disability for work was causally related to the accepted September 4, 2006 employment incident. The Board finds that it is insufficient to establish appellant's claim.

Appellant has not submitted rationalized medical evidence establishing that he sustained left ear hearing loss and tinnitus in the performance of duty on September 4, 2006. He has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained left ear hearing loss and tinnitus while in the performance of duty on September 4, 2006, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board