

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

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**W.G., Appellant** )

**and** )

**DEPARTMENT OF THE NAVY, NORFOLK )  
NAVAL STATION, Norfolk, VA, Employer )**

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**Docket No. 07-550  
Issued: June 6, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On December 20, 2006 appellant filed an appeal of a July 22, 2006 decision of the Office of Workers' Compensation Programs denying his hearing loss claim and August 30 and November 24, 2006 decisions denying modification. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

**ISSUE**

The issue is whether appellant has established that he sustained a traumatic right ear injury in the performance of duty on April 19, 2006.

## **FACTUAL HISTORY**

On April 29, 2006 appellant, then a 46-year-old mechanical engineering technician, filed a traumatic injury claim (Form CA-1) asserting that he sustained right ear pain, pressure and “ringing sounds” due to an April 19, 2006 exposure to hazardous noise. He asserted that his “right ear was in close proximity to an internal voice communication system located in the main machinery space, when an announcement was made.”

In a May 11, 2006 letter, the Office advised appellant of the medical and factual evidence needed to establish his claim. The Office emphasized the need for his attending physician to submit a rationalized report explaining how and why the April 19, 2006 incident would cause the claimed right ear injury. The Office afforded appellant 30 days in which to submit such evidence.

Appellant then submitted medical records from an April 30, 2006 emergency room visit. Dr. Harry R. Lustig, Jr., an attending physician Board-certified in emergency medicine, noted a history of right ear pain, tinnitus and decreased hearing for the past 11 days after exposure to a loud noise when he worked on a ship. On examination, he found bulging of the right eardrum with clear fluid. Dr. Lustig diagnosed a right eustachian tube dysfunction.

In a May 17, 2006 note, Dr. Joseph M. Higgins, an attending Board-certified internist, noted examining appellant on May 5, 2006 for “ongoing ear problems and [decreased] hearing.”

By decision dated July 12, 2006, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office accepted that, on April 19, 2006, appellant’s “right ear was in close proximity to an internal voice communication system when an announcement was made.” The Office found, however, that appellant submitted insufficient medical evidence explaining how and why the accepted incident would cause any injury to his right ear.

In a July 24, 2006 form, appellant requested reconsideration. He submitted additional medical evidence.

In a May 31, 2006 report, Dr. Richard J. Hood, an attending Board-certified otolaryngologist, noted a history of moderate hearing loss in the right ear. He noted that the “hearing loss began suddenly on April 19<sup>th</sup> [2006] ... and may be related to a sudden blast of noise from a loudspeaker by his right ear at work at the shipyards.” Dr. Hood related appellant’s symptoms of tinnitus and a sensation of fullness in the right ear. He found no objective abnormalities on clinical examination. Dr. Hood obtained audiometric test results showing a mild bilateral sensorineural hearing loss, greater on the right. He diagnosed a sensory hearing loss and subjective tinnitus.

In a July 20, 2006 slip, Dr. Higgins stated that he examined appellant on May 5, 2006 and diagnosed “noise exposure and eustachian tube dysfunction.

By decision dated August 30, 2006, the Office denied modification on the grounds that the evidence submitted was insufficient. The Office found that the medical evidence submitted

on reconsideration did not contain a definite explanation of how and why the April 19, 2006 incident would cause the claimed right ear injury.

In a September 15, 2006 form, appellant requested reconsideration. He submitted additional medical evidence.

In a September 6, 2006 report, Dr. Hood stated that appellant presented “for recheck of his right-sided hearing asymmetry and tinnitus which occurred after a blast of noise from a loudspeaker in April while at work.” He related that appellant’s tinnitus had resolved but that the right-sided hearing loss persisted. Dr. Hood obtained audiometric test results showing a continued hearing loss, greater on the right.<sup>1</sup> Tympanometry was within normal limits. Dr. Hood diagnosed a sensorineural hearing loss.

By decision dated November 24, 2006, the Office denied modification on the grounds that the evidence submitted was insufficient. It found that the additional medical evidence submitted was insufficiently rationalized to establish causal relationship. The Office noted that Dr. Hood’s opinion that appellant’s hearing loss was “most likely” due to the April 19, 2006 incident was unsupported by rationale and too indefinite to meet appellant’s burden of proof.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> 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; that an injury was sustained while 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.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.<sup>5</sup>

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<sup>1</sup> Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second (cps) revealed decibel losses of 35, 45, 35 and 55 respectively. Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 cps revealed decibel losses of 30, 30, 20 and 45 decibels.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

### ANALYSIS

Appellant asserted that he sustained a hearing loss in his right ear and resolved tinnitus due to an April 19, 2006 noise exposure incident in which his right ear was in close proximity to a shipboard loudspeaker when an announcement was made. The Office accepted that this incident occurred as alleged. The Office denied the claim on the grounds that the medical evidence submitted was insufficiently rationalized to establish that the accepted noise exposure caused a right-sided hearing loss and resolved tinnitus.

Appellant submitted medical evidence in support of his claim. Dr. Lustig, an attending physician Board-certified in emergency medicine, noted in April 30, 2006 reports that appellant had right ear pain since the April 19, 2006 incident. He diagnosed a right eustachian tube dysfunction but did not address causal relationship. Dr. Higgins, an attending Board-certified internist, submitted May 17 and July 20, 2006 notes diagnosing eustachian tube dysfunction and an unspecified history of noise exposure. As neither physician provided medical rationale explaining how and why the April 19, 2006 incident would cause the diagnosed eustachian tube dysfunction, their opinions are of insufficient probative value to establish causal relationship in this case.<sup>7</sup>

Appellant also submitted reports from Dr. Hood, an attending Board-certified otolaryngologist. In a May 31, 2006 report, Dr. Hood opined that appellant's right-sided sensory hearing loss "may be related to a sudden blast of noise from a loudspeaker by his right ear at work at the shipyards." In a September 6, 2006 report, he explained that appellant's "right-sided hearing asymmetry and tinnitus ... occurred after a blast of noise from a loudspeaker in April while at work." Thus, Dr. Hood demonstrated a detailed, accurate knowledge of the accepted April 19, 2006 incident. He is a Board-certified specialist in the field of medicine germane to appellant's claim. Also, Dr. Hood consistently supported causal relationship.

Although Dr. Hood's opinion is not sufficiently rationalized<sup>8</sup> to meet appellant's burden of proof in establishing his claim, it stands uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.<sup>9</sup> However, the Office did not undertake further development of this aspect of the claim, such as requesting that Dr. Hood submit a supplemental report to clarify his opinion regarding any causal relationship between the accepted April 19, 2006 exposure to loud noise and appellant's right-sided hearing loss with resolved tinnitus. The Board finds that, under the circumstances of this case, Dr. Hood's opinion was sufficiently relevant and compelling to warrant further development.

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<sup>6</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>7</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>8</sup> See *Frank D. Haislah*, 52 ECAB 457 (2001) (medical reports lacking rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>9</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.<sup>10</sup> Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in a proper manner. Therefore, the Board finds that the case must be remanded to the Office for further development regarding Dr. Hood's opinion that the April 19, 2006 occupational noise exposure caused appellant's hearing loss and resolved tinnitus. The Office should request that Dr. Hood submit a supplemental, clarifying report on this issue. If Dr. Hood cannot provide such a report, the case should be referred to an appropriate specialist or specialists to obtain a rationalized opinion as to whether the accepted April 19, 2006 noise exposure caused or aggravated appellant's hearing loss, resolved tinnitus or any other otologic pathology. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

### **CONCLUSION**

The Board finds that the case is not in posture for a decision as the case must be remanded to the Office for further development on the issue of any causal relationship between appellant's accepted April 19, 2006 noise exposure and his right-sided hearing loss and resolved tinnitus.

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<sup>10</sup> *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 24, August 30 and July 22, 2006 are set aside and the case remanded for further development consistent with this decision.

Issued: June 6, 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