

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

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D.B., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. CUSTOMS & BORDER PROTECTION, )  
Pembroke Pines, FL , Employer )

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**Docket No. 06-2177  
Issued: March 28, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 26, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated August 15, 2006, which found that he did not sustain an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

**FACTUAL HISTORY**

On May 30, 2006 appellant, then a 37-year-old border patrol agent, filed an occupational disease claim alleging that he sustained a loss of hearing which he attributed to his federal employment. He noted having to raise the volume on the television and having a hard time

hearing normal conversations. Appellant first became aware of his hearing loss and its relation to his work on May 30, 2006. He did not stop work.

By letter dated June 26, 2006, the Office asked appellant to submit additional evidence, including a complete job history (federal and nonfederal), a description of the source of his noise exposure at the employing establishment and medical evidence.

In a May 12, 2006 report, Dr. A.S. Lalani, a Board-certified otolaryngologist, noted that appellant presented with increasing difficulty with his hearing and dizziness. Dr. Lalani indicated that appellant related that “he was involved in an automobile accident in August, however, his problems were present before the accident” and worsened afterwards. He conducted a physical examination and diagnosed bilateral hearing impairment and tinnitus of undetermined etiology, recurrent headaches, visual distortion and questionable dizziness and disequilibrium of undetermined etiology, bilateral tympanosclerosis and Eustachian tube malfunctions. A May 11, 2006 audiogram accompanied his report. In an attending physician’s report dated June 12, 2006, Dr. Lalani again noted that the cause of appellant’s condition was “unknown.”

A June 4, 2001 firearms audiogram report, signed by a nurse, indicated that appellant was exposed to sources of noise which included firearms, trucks, buses, airplanes and trains for eight hours per day, for at least four days per month. She indicated that appellant used earplugs and earmuffs.<sup>1</sup> An audiogram of the same date accompanied the report and also appears to be signed by a nurse or nurse technician.

By decision dated August 15, 2006, the Office denied appellant’s claim. The Office found that appellant did not establish that he actually experienced noise exposure at work sufficient enough to cause hearing loss. The Office noted that appellant received the June 4, 2001 firearms report which indicated that appellant was subject to noise from buses, airplanes, trucks, trains and guns but was not completed by appellant. The Office further found that appellant did not provide a history of his prior employment history and other noise exposure.

### **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 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.<sup>3</sup> These are the essential

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<sup>1</sup> It is not clear if this report was performed on behalf of the employing establishment.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

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 medical evidence required to establish 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. 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.<sup>5</sup>

### ANALYSIS

Appellant failed to submit sufficient evidence to establish that he sustained a bilateral hearing loss causally related to factors of his federal employment. He has not submitted sufficient evidence to establish that he was, in fact, exposed to noise at work. Appellant did not identify any specific sources of noise exposure. Although the Office received some information from a nurse regarding appellant's possible exposure to noise, he did not submit a description of the sources of exposure to hazardous noise believed responsible for his hearing loss.

The factual evidence developed in this case does not substantiate appellant's claim of noise exposure. Appellant indicated that he had trouble hearing his television but he did not identify specific sources of workplace noise that allegedly caused his hearing loss. Dr. Lalani, in his May 12, 2006 report, noted that appellant experienced dizziness and difficulty with hearing, and that his problems worsened after an automobile accident. However, he did not identify any noise from appellant's employment or address how appellant's symptoms were caused by his employment. Rather, he advised that the cause of appellant's condition was "unknown." The Board finds that appellant has not met his burden to submit sufficient evidence to establish that he experienced noise exposure occurring at the time, place and in the manner alleged.<sup>6</sup>

In its June 26, 2006 letter, the Office advised appellant of the evidence needed to establish his hearing loss claim but such evidence was not forthcoming. Appellant has not

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<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

submitted factual evidence identifying employment factors alleged to have caused or contributed to his claimed hearing loss.<sup>7</sup> He failed to meet his burden of proof to establish an employment-related hearing loss.

**CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 15, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 28, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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

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<sup>7</sup> On appeal, appellant submitted new evidence, a September 20, 2006 narrative statement addressing sources of workplace noise. However, the Board may not consider this evidence for the first time on appeal as its review is limited to the evidence in the case record that was before the Office at the time of its final decision. *See* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.