

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

_____)
D.F., Appellant)

and)

DEPARTMENT OF THE AIR FORCE,)
Warner Robins, GA, Employer)
_____)

Docket No. 08-1458

Issued: November 10, 2008

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 April 23, 2008 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated February 4, 2008 which denied his hearing loss claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this decision.

ISSUE

The issue is whether appellant has established that he sustained an injury in the performance of his duties.

FACTUAL HISTORY

On August 31, 2007 appellant, then a 62-year-old inventory management specialist, filed an occupational disease claim alleging that he sustained a hearing loss in the performance of duty.

On September 10, 2007 the Office requested additional information. Appellant responded in a September 26, 2007 letter and submitted additional information.

On December 4, 2007 the Office informed appellant that he was being sent for a second opinion evaluation to address the issue of whether he had noise-induced hearing loss as a result of his federal employment. The December 4, 2007 statement of accepted facts reported that appellant worked as an aircraft mechanic from 1990 to 2007 with exposure including noise from generators, air conditioner, air compressor, grinders, drills, impact tools and tow equipment for five days a week, eight hours a day. On December 21, 2007 appellant was examined by Kenneth Walker, an otolaryngologist, and an audiogram was performed. In his report dated the same day, Dr. Walker opined that appellant's hearing loss was not due to his federal employment but that the high frequency hearing loss was consistent with presbycusis. He agreed that the workplace exposure, "machinery," was sufficient as to intensity and duration to have caused the hearing loss.

In a December 28, 2007 report, Dr. Walker noted that the December 21, 2007 audiogram revealed mild high frequency sensorineural hearing loss bilaterally. He also noted that audiograms from 1988 showed essentially normal hearing. Dr. Walker opined that appellant's hearing loss was mild and consistent with presbycusis at this point.

In a February 4, 2008 decision, the Office denied appellant's claim finding that the medical evidence did not demonstrate that appellant's hearing loss was related to the established work-related events. It relied on Dr. Walker's opinion in concluding that his hearing loss was due to presbycusis and not due to his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.²

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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant.³

¹ 5 U.S.C. §§ 8101-8193

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005).

ANALYSIS

Appellant alleged that he sustained a hearing loss due to factors of his employment. The Office accepted that appellant was exposed to various machinery noise during his federal employment from 1990 to 2007. It denied appellant's claim based on Dr. Walker's reports. Dr. Walker noted that appellant went from essentially normal hearing, revealed in 1988 audiogram, to mild high frequency sensorineural hearing loss bilaterally, revealed in the December 21, 2007 audiogram. He also agreed that appellant's workplace exposure was sufficient enough to have caused his hearing loss however he then concluded that appellant's hearing loss was due to presbycusis. Dr. Walker offered no explanation as to why appellant's hearing loss was caused by presbycusis or why it was not caused by workplace exposure. It is well established that proceedings under the Act are not adversarial in nature, and while the employee has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴ The Office sent appellant out for a second opinion. Once the Office starts to procure a medical opinion, it must do a complete job.⁵ Dr. Walker's opinion is merely a conclusion without any rationale supporting it. Medical evidence must include rationale explaining how the physician reached the conclusion he or she is supporting.⁶ Dr. Walker's opinion is not sufficiently supported to use as the basis for denying appellant's claim.

The Board finds that the Office failed to undertake proper development of the medical evidence. The Office erred by not requesting Dr. Walker to provide a supplemental report, which explained with medical rationale the cause of appellant's hearing loss.

On remand, the Office should further develop the medical evidence and obtain a supplemental report from Dr. Walker to address the issue of whether appellant's accepted work activities caused or contributed to his hearing loss. Following this and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that the Office did not properly develop the medical evidence and should be remanded for further development.

⁴ *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

⁵ *Richard F. Williams*, 55 ECAB 343, 346 (2004); *William N. Saathoff*, 8 ECAB 769, 770-71 (1956).

⁶ *Beverly A. Spencer*, 55 ECAB 501 (2004).

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2008 decision of the Office of Workers' Compensation Programs is vacated and remanded.

Issued: November 10, 2008
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