

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH F. LORD and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-1453; Submitted on the Record;
Issued December 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden to establish that he sustained a hearing loss in the performance of duty.

On June 14, 1996 appellant, a 49-year-old materials handler, filed a Form CA-2, claim for occupational disease, alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware that he had sustained a hearing loss on June 14, 1996. Accompanying the claim form was a letter from appellant describing his employment history and documentation from his employing establishment corroborating this information. Appellant subsequently retired from the employing establishment.

In a letter dated September 19, 1996, the Office of Workers' Compensation Programs referred appellant and a statement of accepted facts to Dr. Herbert Kean, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant, which was scheduled for October 21, 1996.

Dr. Kean, who had previously examined appellant in 1993, reexamined appellant on October 21, 1996, at which time appellant underwent extensive audiologic and otologic evaluation. In a report dated November 4, 1996, Dr. Kean noted that appellant told him he had worked at the employing establishment from 1983 until 1996, and that he had not been exposed to noise since 1995. Dr. Kean stated that appellant had a preexisting hearing loss when he began working for the employing establishment, on March 4, 1983, and indicated that he had performed an audiogram on appellant in 1993, which he compared to audiograms performed at the shipyard in 1992 and 1996. Dr. Kean found that there had been no change in appellant's hearing from the shipyard audiograms in 1992, his 1993 audiogram and the June 1996 shipyard audiogram. Based on this history, Dr. Kean found that any hearing loss appellant had developed since 1995 would not be employment related.

Dr. Kean noted that appellant's hearing loss in June 1996 was the same as it was in June 1992, and that when he examined appellant in October 1996, he showed significant deterioration at 2,000 hertz (Hz) in the right ear and at 2,000 Hz in the left ear. Dr. Kean opined that this deterioration was not related to his occupation at the shipyard and that there had been no change in his audiogram results since the most recent examination at which he could attribute his hearing loss to shipyard employment.

On November 20, 1996 an Office medical adviser adopted Dr. Kean's opinion that appellant's hearing loss was not employment related.

In a decision dated December 11, 1996, the Office found that appellant had not suffered an employment-related hearing loss based on the medical evidence of record.

In a letter dated May 5, 1997, appellant's attorney requested reconsideration of the Office's previous decision. Appellant did not submit any additional medical evidence in support of this request.

By decision dated May 20, 1997, the Office affirmed its previous decision, finding that appellant had not sustained an employment-related hearing loss.

The Board finds that appellant has not met his burden to establish that he sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 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.³

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.

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence required to establish causal relationship is usually rationalized medical 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 appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of appellant, 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 appellant.⁴

The Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁵ and appellant has not submitted medical evidence to establish that the employment incident caused a personal injury.

The only medical evidence addressing the cause of appellant's hearing loss indicates that appellant's hearing loss was not caused by employment factors. In his November 4, 1996 report, Dr. Kean reviewed audiometric testing performed on his behalf, reviewed appellant's medical and audiological records, and noted findings on examination. Dr. Kean opined that, while appellant had sustained some deterioration in his hearing since his most recent shipyard audiogram in June 1996, this hearing loss, as established by physical examination and audiometric testing, was not due to exposure to loud noise in his federal employment. An Office medical adviser adopted Dr. Kean's conclusion that appellant had not sustained any hearing loss due to noise exposure in a federal workplace.

Consequently, the Board finds that the Office properly determined that the medical evidence establishes that appellant's hearing loss is not due to factors of his federal employment.

⁴ *Id.*

⁵ See *John J. Carlone*, 41 ECAB 353 (1989).

The May 20, 1997 and December 11, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
December 22, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member