

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM J. MURRAY and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-1564; Submitted on the Record;
Issued March 20, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

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

On October 12, 1995 appellant, then a 42-year-old production controller, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware he had sustained a hearing loss in March 1994, when he allegedly underwent a hearing test administered by the employing establishment which indicated a hearing loss. Accompanying the claim form was a handwritten letter from appellant describing his employment history and indicating that he had been exposed to loud noise with the employing establishment.¹

Appellant subsequently submitted copies of his employment and medical records with the employing establishment including annual audiograms administered in 1987 and from 1991 to 1995.

In a November 22, 1995 letter, the Office informed appellant that he needed to undergo additional medical studies in order to ascertain the cause and extent of his injury-related impairment. The Office therefore referred appellant and a statement of accepted facts to Dr. Herbert Kean, a Board-certified otolaryngologist, for an audiologic and otologic evaluation, which the Office scheduled for January 17, 1996.

¹ In an interoffice memorandum dated November 9, 1995, the Office of Workers' Compensation Programs noted that the instant claim had been filed near or after the closing of the employing establishment. The Office therefore stated that it had contacted the program manager for the employing establishment and agreed that in these claims, the Office should accept the employee's statement as correct since the employing establishment was closed and its supervisors could not be contacted for comment.

The audiologist performing the January 17, 1996 audiogram for Dr. Kean noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported: right ear -- 30, 30, 75 and 35 decibels: left ear -- 30, 35, 35 and 45 decibels.

In a January 22, 1996 medical report, Dr. Kean noted that appellant had stated he had not been exposed to noise since September 1995. Dr. Kean opined that based on his review of previous audiograms there was some fluctuation in his hearing during his employment, but that most of his audiograms were normal and had been normal as recently as 1993. Dr. Kean stated that in 1994, the right ear was normal and the left ear showed some changes at 500, 3,000 and 4,000 hertz, but that in 1995, these changes had cleared up and reversed themselves.

Dr. Kean further stated that appellant underwent an audiogram at the employing establishment in March 1995 and that, compared to the one he performed on January 17, 1996, there was significant change in all frequencies, but the patterns demonstrated were flat in nature and did not correlate with a history of noise exposure. Dr. Kean commented that it was impossible for someone working in this environment for 20 years to develop a hearing loss the last few months of his employment. Dr. Kean concluded that appellant had no hearing loss resulting from his employment with the employing establishment, that any hearing loss he sustained represented a medical problem which required further evaluation and that the pattern of his hearing loss did not fit that of his occupational noise.

On January 29, 1996 an Office medical adviser concurred with Dr. Kean that appellant did not have a ratable hearing loss causally related to his employment. Hearing aids were not recommended.

In a decision finalized April 9, 1996, the Office found that appellant had not suffered an employment-related hearing loss based on the medical evidence of record.

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 Act² 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.³ 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.⁴

² 5 U.S.C. § 8101 *et seq.*

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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 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.⁵

The Office accepted 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,⁶ and appellant has not submitted medical evidence to establish that the employment incident caused a personal injury.

In his January 22, 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 based on a review of his past records appellant had no hearing loss resulting from his employment with the employing establishment and that the pattern of his hearing loss did not result from his employment with the employing establishment.

On January 29, 1996 an Office medical adviser concurred with the conclusion of Dr. Kean that appellant did not have a ratable hearing loss related to his employment.

Consequently, the Board finds that the Office properly determined that appellant did not sustain a ratable hearing loss caused by factors of his federal employment.

⁵ *Id.*

⁶ See *John J. Carlone*, 41 ECAB 353 (1989).

The April 9, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
March 20, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member