

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. HALL and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Westbury, NY

*Docket No. 99-2399; Submitted on the Record;
Issued September 20, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met his burden of proof to establish that he sustained a right ear injury as alleged.

On April 29, 1998 appellant, then a 27-year-old air traffic controller, filed a notice of traumatic injury and claim alleging that, on that day, while in the performance of duty, he sustained an injury to his right ear when he received a very loud high pitched tone through his headset. Appellant stopped work on April 29, 1998, with instructions not to return to duty until he had seen a doctor. In a decision dated June 27, 1998, the Office of Workers' Compensation Programs denied appellant's traumatic injury claim on the grounds that fact of injury was not established.

By letter dated August 4, 1998, appellant requested reconsideration of the Office's decision and submitted a personal narrative statement in support of his request. In a decision dated November 5, 1998, the Office declined to reopen appellant's claim on the grounds that appellant's request for reconsideration neither raised substantive legal questions nor included new and relevant evidence, and therefore was not sufficient to warrant merit review of the prior decision.

On February 2, 1999 appellant requested reconsideration of the Office's prior decision and submitted additional factual evidence in support of his request. In a decision dated May 19, 1999, the Office found the newly submitted evidence sufficient to establish that the incident occurred as alleged, but insufficient to establish that appellant sustained an injury as a result of the incident. Therefore, the Office declined to modify its prior denial of appellant's claim.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained a right ear injury as alleged.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.² In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.³ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

In support of his claim, appellant submitted both an audiotape of the alleged loud tone and a Tone Incident Form report documenting that he had been exposed to a 2.5 decibel increase on April 29, 1998. On March 1, 1999 the Office forwarded this information to the employing establishment for evaluation and comment. In a response dated March 25, 1999, the employing establishment stated that, while the audiotape was not a certified recording, as it lacked the requisite identifying characteristics, the Tone Incident Form established that, on April 29, 1998, appellant was exposed to a 2.5 decibel gain, which the employing establishment asserted was insignificant. Therefore, the Board finds that appellant submitted sufficient factual information to establish that he was exposed to an increased level of volume at the time, place and in the manner alleged.

The Board further finds that appellant did not establish that he sustained an injury as a result of the April 29, 1998 incident. The only medical evidence of record consists of a duty status report, Form CA-17, completed by Dr. Harry Wood, an audiologist, on May 8, 1998. In this report, Dr. Wood stated that appellant's hearing examination yielded normal results and that appellant could return to work full time, without restrictions. By letter dated April 7, 1999, the Office explained to appellant the type of medical evidence necessary to establish that he

¹ 5 U.S.C. §§ 8101-8193.

² *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.115.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

⁴ *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Charles E. Evans*, *supra* note 2.

sustained a personal injury as a result of the April 29, 1998 incident, however, appellant did not submit any additional medical evidence.⁷ As the record is devoid of any medical evidence to establish that appellant sustained a personal injury on April 29, 1998, the second prong of the fact-of-injury test has not been established. Appellant has not met his burden of proof.

The decisions of the Office of Workers' Compensation Programs dated May 19, 1999 and November 5, 1998 are hereby affirmed.

Dated, Washington, DC
September 20, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁷ The Board notes that appellant submitted with his appeal a June 21, 1999 report from an audiologist. The Board's review on appeal is limited to the evidence that was before the Office at the time it issued its final decision. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). The Office's final decision in this case was issued on May 19, 1999. Therefore, the Board cannot review the June 21, 1999 report.