

JAMES L. MOODY, Appellant

and

**TENNESSEE VALLEY AUTHORITY,
SHAWNEE RIVER PLANT, West Paducah, KY,
Employer**

Case Submitted on the Record

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

On September 5, 2003 appellant, filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated August 15, 2003 and November 7, 2002. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant established that he sustained a hearing loss while in the performance of duty; and (2) whether the Office abused its discretion in finding that appellant abandoned his request for an oral hearing.

On October 16, 2000 appellant a former federal employee, filed a notice of occupational disease alleging that his hearing loss was caused by factors of federal employment.

By letter dated December 8, 2000, the Office advised appellant that the evidence submitted was insufficient to establish his claim for hearing loss. The Office requested that appellant submit additional medical evidence supportive of his claim within approximately 30 days.

In a narrative statement, received by the Office on December 26, 2000, appellant stated that he was exposed to loud noises generated by heavy equipment such as large pumps, air compressors and turbine engines. Appellant noted that he retired in September 1988. The employing establishment submitted a copy of appellant's employee record including audiograms dated 1978, 1981, 1984, 1986 and 1966. The Office then referred him to Dr. Phillip Klapper, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated October 15, 2001, Dr. Klapper stated that appellant's hearing loss was caused by presbycusis. However, he also noted that appellant's work-related noise exposure was sufficient in intensity and duration to have caused the hearing loss.

By decision dated October 22, 2001, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his hearing loss was caused by his employment.

On October 29, 2002 appellant requested an oral hearing, however, in an August 9, 2002 decision, an Office hearing representative remanded the case to the Office for a rationalized medical opinion from Dr. Klapper regarding whether appellant's hearing loss was causally related to his employment. The hearing representative stated that Dr. Klapper failed to provide a narrative report or explain the contradiction in his findings that appellant's hearing loss was caused by his age but that his exposure to work-related noise was sufficient to cause his hearing loss. The hearing representative advised that Dr. Klapper should provide a reasoned medical opinion regarding whether appellant's hearing loss was causally related to his employment.

In a supplemental report dated October 7, 2002, Dr. Klapper stated that appellant's hearing loss, at his present age, was based on presbycusis. He added that the mere fact that appellant was exposed to noise at work did not mean that his noise exposure was the cause of his hearing loss. Dr. Klapper added that different people have different sensitivity to noise and that he speculated that, if appellant's hearing loss had been work related, it would have been "considerably worse than was demonstrated on his most current audiogram." He added: "It is my opinion that [claimant's] federal employment did not cause his hearing loss. It did not aggravate his hearing loss. His hearing loss is the direct result of a normal ageing (sic) process and is referred to as presbycusis."

On November 7, 2002 the Office denied appellant's claim, again finding that his medical evidence was insufficient to establish causal relationship.

By letter dated November 15, 2002, appellant requested an oral hearing. On June 2, 2003 the Office advised appellant that the hearing would be held on July 8, 2003. By decision dated August 15, 2003, the Office found that appellant abandoned his

November 15, 2002 request for a hearing. The Office noted that the hearing was scheduled for July 8, 2003, that appellant received written notification of the hearing 30 days in advance, that appellant failed to appear and that the record contained no evidence that appellant contacted the Office to explain his failure to appear.

LEGAL PRECEDENT-ISSUE 1

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 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 was causally related to the employment factors identified by the claimant.¹

The medical evidence required to establish a 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 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.²

ANALYSIS-ISSUE 1

In this case, an Office hearing representative remanded the case to the Office for a reasoned medical opinion from Dr. Klapper, explaining whether appellant's hearing loss was causally related to employment. Dr. Klapper, who had a full and accurate history of his work-related noise exposure based on the statement of facts, a copy of appellant's medical records including October 15, 2001 audiogram test results. Dr. Klapper indicated that, although appellant was exposed to noise sufficient to cause his hearing loss, it was caused by presbycusis, or hearing loss induced by old age. Appellant has not provided any evidence that indicated that his federal noise exposure was the cause of any of his hearing loss. Thus, in the absence of a rationalized opinion establishing a causal relationship between appellant's diagnosed hearing loss and factors of his employment, the Office properly denied compensation.

¹ Gary J. Watling, 52 ECAB 278 (2001).

² Ricky S. Storms, 52 ECAB 349 (2001).

LEGAL PRECEDENT-ISSUE 2

With respect to abandonment of hearing requests, Chapter 2.1601.6.e of the Office's procedure manual provides in relevant part:

“(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

“Under these circumstances, [the Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the [District Office]. In cases involving prerecoupment hearings, [the Branch of Hearings and Review] will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [District Office].

“(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, [the Branch of Hearings and Review] should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.”³

ANALYSIS-ISSUE 2

In the present case, the Office scheduled an oral hearing before an Office hearing representative at a specific time and place on July 8, 2003. Furthermore, the record shows that the Office mailed appropriate notice to the claimant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing and that he failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the criteria for abandonment as specified in Chapter 2.1601.6.e of the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.

CONCLUSION

The Board finds that appellant failed to establish that his hearing loss was causally related to his employment.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6.e (January 1999).

The Board further finds that the Office properly found that appellant abandoned his request for a hearing.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated August 15, 2003 and November 7, 2002 are hereby affirmed.

Issued: November 26, 2003
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member