

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

KENNETH W. COSSEY, Appellant

and

**TENNESSEE VALLEY AUTHORITY,
Muscle Shoals, AL, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 04-976
Issued: July 27, 2004**

Appearances:
Kenneth W. Cossey, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On March 3, 2004 appellant filed a timely appeal of the February 4, 2004 merit decision of the Office of Workers' Compensation Programs, which denied appellant's claim for an employment-related hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant established that his claimed bilateral hearing loss was causally related to his federal employment.

FACTUAL HISTORY

On June 18, 2003 appellant, a 57-year-old police officer, filed an occupational disease claim for hearing loss. He attributed his hearing loss to working in areas with prolonged loud noise. Appellant also stated that he was exposed to high noise from equipment operation and qualification with firearms. He identified January 1, 1990 as the date he first became aware of his employment-related hearing loss. Appellant began working as a public safety officer in

August 1977 and his employment duties required expertise in operating firearms. Due to the nature of the position, appellant was exposed periodically to noise from gunfire. The Office found that earplugs were worn during firearms training and appellant was exposed to noise levels between 25 to 160 decibels while working.¹ The medical evidence submitted with the claim included 15 audiograms administered over a 25-year period from 1977 to 2001. The Office also received an initial employment physical examination dated August 12, 1977 and a periodic physical examination dated August 2, 2002.²

The Office referred appellant for examination by Dr. George H. Godwin, a Board-certified otolaryngologist, who examined appellant on January 21, 2004 and an audiogram was administered that same day. He reported that at the beginning of appellant's federal civilian exposure he had a mild high frequency hearing loss, left greater than right. Dr. Godwin diagnosed bilateral neurosensory hearing loss. However, he found that appellant's hearing loss was not due to his federal civilian employment exposure. Dr. Godwin explained that appellant's hearing loss was consistent with presbycusis and he did not show a loss greater than what would be expected by presbycusis. The Office later referred the record to its medical adviser, who concurred with Dr. Godwin's assessment regarding the cause of appellant's hearing loss.

In a decision dated February 4, 2004, the Office denied appellant's claim based on his failure to establish a causal relationship between his hearing loss and his employment exposure.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that any specific condition or disability for work for which he claims compensation is causally related to the employment injury.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵

In order to establish that an injury was sustained in the performance of duty, 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

¹ The Office's December 31, 2003 statement of accepted facts also indicates that appellant was exposed to gunfire during training while in the military from 1964 to 1967. He was also stationed aboard ship in engine rooms with high noise levels.

² The August 2, 2002 report referred to the results of a hearing test administered that day; however, the record does not include an August 2, 2002 audiogram.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

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 diagnosed condition is causally related to the employment factors identified by the claimant.⁶

ANALYSIS

Dr. Godwin was the only physician of record to address the cause of appellant's hearing loss, which he attributed to presbycusis. Based on earlier audiograms, Dr. Godwin noted that appellant had a mild high frequency hearing loss at the outset of his federal civilian service. When compared to the most recent audiogram administered on January 21, 2004, Dr. Godwin found that appellant's current hearing loss was not in excess of what would normally be expected as a result of the aging process or presbycusis. Hence, Dr. Godwin concluded that appellant's hearing loss was not attributable to his employment exposure to noise, but due to presbycusis. The Office medical adviser reviewed Dr. Godwin's findings and found his opinion to be reasonable.

Appellant's most recent prior physical examination was conducted on August 2, 2002.⁷ This employing establishment sponsored periodic examinations which revealed that appellant's hearing was essentially normal for speech sounds bilaterally and that he had a moderate loss for high pitch sounds in the left ear and a mild loss for high pitch sounds in the right ear. The report further noted that appellant's August 2, 2002 hearing test revealed that his hearing loss was slightly worse for mid-frequency sounds in at least one ear when compared to previous tests. The record, however, does not include an August 2, 2002 audiogram, and the physician who examined appellant did not offer an opinion as to the etiology of appellant's reported hearing loss. As the record in the instant case is devoid of any rationalized medical opinion evidence attributing appellant's hearing loss to his accepted employment exposure, appellant has failed to establish that his claimed bilateral hearing loss is employment related. Accordingly, the Office properly denied appellant's claim.

CONCLUSION

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

⁶ *Victor J. Woodhams, supra* note 5.

⁷ The examination was performed at Kellermed Occupational Health; however, the examining physician's signature is illegible.

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 27, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member