

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

C.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Omaha, NE, Employer**

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**Docket No. 08-537
Issued: January 27, 2009**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 10, 2007 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated May 15 and November 19, 2007 finding that he failed to establish disability as a result of tinnitus. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant is entitled to wage-loss compensation for tinnitus related to his employment.

FACTUAL HISTORY

This case was previously before the Board. The facts as set forth in the Board's previous decisions and orders are hereby incorporated by reference.¹ Appellant's occupational disease claim for an employment-related loss of hearing was accepted by the Office for a mild binaural hearing loss on November 18, 1993. He retired from the employing establishment on November 20, 1992. The Office denied appellant's claim of a ratable hearing loss and tinnitus on multiple occasions.

In an April 25, 2007 order remanding case, the Board directed the Office to conduct a merit review on the issue of whether appellant had any work-related disability due to tinnitus.² In a November 3, 2000 report, Dr. Britt A. Thedinger, a Board-certified otolaryngologist, diagnosed mild-to-moderate high frequency noise-induced sensorineural hearing loss. He noted that appellant had bilateral high pitched nonpulsatile tinnitus beginning in 1988 which became constant in 1990. Dr. Thedinger indicated that appellant's tinnitus was the direct result of his accepted sensorineural hearing loss. In an April 15, 2002 report, he reiterated that noise at the employing establishment was the direct cause of appellant's tinnitus. Appellant continued to have a mild-to-moderate high frequency noise-induced sensorineural hearing loss of each ear. On March 6, 2003 Dr. Thedinger stated that appellant had "a severe disabling bilateral high pitched nonpulsatile tinnitus." In a March 2, 2004 report, he again advised that appellant had disabling tinnitus as a result of high-frequency sensorineural hearing loss.

By decision dated May 15, 2007, the Office denied modification of its April 29, 2005 decision, which found that appellant's hearing loss was not ratable and he was not entitled to a schedule award. It also found that he did not establish that his tinnitus was caused by noise-induced hearing loss that he was unable to perform his former employment.

On June 2, 2007 appellant requested reconsideration. In a May 30, 2007 report, Dr. Thedinger again opined that appellant's tinnitus was disabling and permanent. He stated that the tinnitus was "definitely louder than the degree of hearing loss that [appellant has] in the high frequencies" and that it was not connected to his other disabling conditions of coronary artery disease or irritable bowel syndrome. Dr. Thedinger advised that the high frequency noise-induced sensorineural hearing loss was a direct result of his employment and the direct cause of the tinnitus. He further noted that the stress of appellant's job also contributed to the severity of the tinnitus and its permanent nature.

In a June 21, 2007 note, Dr. Lee F. McNamara advised that he had been appellant's primary care physician for years and had referred him to Dr. Thedinger.

By letter dated June 21, 2007, the employing establishment noted that its worksites were under the standards of the Occupational Safety and Health Administration. The employing

¹ See Docket No. 01-1297 (issued July 1, 2002) (*petition for recon. denied*, October 8, 2002); Docket No. 03-2176 (issued February 24, 2004) (*petition for recon. denied*, June 10, 2004); Docket No. 04-1254 (issued October 28, 2004); Docket No. 05-1219 (issued September 30, 2005) (*petition for recon. denied*, January 18, 2006); Docket No. 06-1270 (issued May 7, 2007) (Order Remanding Case).

² Docket No. 06-1270 (issued April 25, 2007).

establishment noted that appellant was a veteran and that military personnel were exposed to extreme noise during their period of duty.

In a July 19, 2007 letter, appellant argued that the reports of Dr. Thedinger established that he was disabled from his employment due to tinnitus.

In a November 19, 2007 decision, the Office denied modification of its May 15, 2007 decision. It found that Dr. Thedinger did not provide sufficient rationale to support appellant's disability from work due to tinnitus.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has determined by its reliability, its probative value, its convincing quality, the care of the analysis the burden of proof to establish the essential elements of his claim by the weight of the evidence,⁴ including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.⁵ As part of his burden, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background showing causal relationship.⁶ The weight of medical evidence is manifested and the medical rationale expressed in support of the physician's opinion.⁷

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 the employee.⁸

³ 5 U.S.C. §§ 8101-8193.

⁴ *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *G.T.*, *supra* note 5; *Nancy G. O'Meara*, 12 ECAB 67, 71 (1960).

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

⁸ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

ANALYSIS

The issue is whether appellant has established that his tinnitus caused disability for work. The Board finds that appellant has not submitted sufficient medical evidence to show that he was disabled as a result of his work-related tinnitus. Appellant retired from the employing establishment on November 20, 1992. In a report dated November 3, 2000, Dr. Thedinger diagnosed appellant with tinnitus due to his federal employment. He noted that it was intermittent in 1988 and became constant in 1990. However, it was not until a March 6, 2003 report that Dr. Thedinger described the tinnitus condition as disabling, stating that it “may have an affect on his concentration, speech, thinking and underlying energy levels.” On March 2, 2004 Dr. Thedinger reiterated his opinion that appellant was disabled in that he would not be able to perform his duties as a tour superintendent. On May 30, 2007 he again opined that appellant’s tinnitus was disabling and was not related to any of appellant’s other medical conditions. Dr. Thedinger stated that the high frequency noise-induced hearing loss while working for the employing establishment was the direct cause of appellant’s tinnitus. He noted that the stress of appellant’s job also contributed to the severity of the tinnitus and its permanent nature.

The Board finds that Dr. Thedinger’s reports are not sufficiently rationalized to establish that appellant was disabled from his federal employment. Appellant retired from work on November 20, 1992. Dr. Thedinger described appellant’s tinnitus as disabling in a March 6, 2003 report. He stated that appellant’s tinnitus “may” have an affect on his concentration, speech, thinking and underlying energy levels. This opinion is speculative and does not explain how tinnitus would disable appellant from performing his former duties. Other reports from Dr. Thedinger reiterated his opinion that appellant was disabled due to this tinnitus. They are similarly lacking in rationale. Dr. Thedinger did not adequately explain why appellant would not be able to perform his duties as a tour superintendent. His stated conclusion does not constitute a rationalized opinion. The opinion of Dr. McNamara, noting that Dr. Thedinger had treated appellant does not constitute a rationalized opinion on the issue of disability.

CONCLUSION

The Board finds that appellant has not established that he is entitled to wage-loss compensation for tinnitus related to his employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 19 and May 15, 2007 are affirmed.

Issued: January 27, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board