

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

C.C., Appellant)

and)

DEPARTMENT OF LABOR, OCCUPATIONAL)
SAFETY & HEALTH ADMINISTRATION,)
ALBANY AREA OFFICE, New York, NY,)
Employer)

**Docket No. 08-1512
Issued: January 21, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On April 30, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated January 29, 2008 denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a noise-induced hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On October 18, 2007 appellant, then a 60-year-old safety and occupational health specialist, filed an occupational disease claim alleging that his hearing loss was caused by factors of his federal employment. He indicated that he first became aware of his condition on May 3, 2006 and realized its relation to his employment on September 15, 2007. Appellant advised

audiometric results in 2006 indicated hearing loss and such hearing loss was confirmed in a 2007 audiogram. He has not stopped work as a result of this condition.

By letter dated October 30, 2007, the Office informed appellant of the evidence needed to support his claim. Appellant was asked to provide a history of employment and a description of any hearing problems, together with any previous hearing tests and medical reports from a physician who examined or treated him for an ear or hearing problem. The Office advised that, for each job title, appellant should describe the sources of noise and the number of hours of exposure each day. In an accompanying letter, it asked the employing establishment to submit information regarding noise exposure and medical examinations, including audiograms.

The employing establishment submitted records of audiometric testing from 1988 to 2007. Audiograms from 1999 were noted as being abnormal with no change from baseline.

In a November 13, 2007 statement, appellant described his past and current noise exposure. He indicated that exposure was dependent upon the type of inspection conducted and his inspection schedule. Appellant stated that most of the time he only found out how noisy it was after he started his inspection or walked into a noisy area. He indicated that he always uses earplugs or earmuffs. Appellant reiterated that occupational physicians told him in 2006 and 2007 that he had a hearing loss.

By decision dated January 29, 2008, the Office denied appellant's claim on the grounds he failed to establish that he sustained an employment-related injury.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 filed within the applicable time limitation; that an injury was sustained while 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.³

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty and must be supported by

¹ 5 U.S.C. §§ 8101-8193.

² *Anthony P. Silva*, 55 ECAB 179 (2003).

³ *See Ellen L. Noble*, 55 ECAB 530 (2004).

medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.⁵ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the 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 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 claimant.⁶ Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁷

ANALYSIS

Appellant failed to submit sufficient evidence to establish that he sustained hearing loss causally related to factors of his federal employment. In particular, he has not sufficiently identified employment factors alleged to have caused or contributed to the presence or occurrence of his claimed hearing loss. In its October 30, 2007 letter, the Office advised appellant of the evidence needed to establish his hearing loss claim. It specified that, for each job title, appellant should describe the sources of noise and the number of hours of exposure each day. However, appellant did not submit a complete description of the sources of exposure to hazardous noise responsible for his claimed hearing loss. He indicated that exposure was dependent upon the type of inspection conducted and his inspection schedule. However, appellant did not describe any specific source of noise and the duration and frequency of such exposure, for any inspection where he encountered workplace noise. Additionally, the medical evidence submitted failed to relate appellant's hearing loss to his employment.

Appellant has not provided the required factual and medical evidence necessary to establish a *prima facie* claim for compensation benefits under the Act.⁸ He failed to meet his burden of proof to establish an employment-related hearing loss.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related hearing loss.

⁴ *Solomon Polen*, 51 ECAB 341 (2000).

⁵ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁶ *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁸ *See Richard A. Weiss*, 47 ECAB 182 (1995).

ORDER

IT IS HEREBY ORDERED THAT the January 29, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 21, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board