

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

\_\_\_\_\_ )  
**B.C., Appellant** )

**and** )

**TENNESSEE VALLEY AUTHORITY,** )  
**BROWNS FERRY NUCLEAR POWER PLANT,** )  
**Muscle Shoals, AL, Employer** )

\_\_\_\_\_ )

**Docket No. 08-2188**  
**Issued: May 11, 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 August 5, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated February 8, 2008 denying modification of a November 2, 2007 merit decision denying his schedule award 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 established that he sustained hearing loss in the performance of duty.

**FACTUAL HISTORY**

On May 18, 2006 appellant, a 70-year-old retired iron worker, filed an occupational disease claim alleging that exposure to noise during his federal employment caused bilateral hearing loss. He first realized that he had a hearing loss and that it was caused or aggravated by his federal employment on April 24, 2006 when he received the results of an audiogram.

Appellant alleged that he began having problems hearing in both ears; had difficulty hearing the television and radio; and had to ask people to repeat words during conversations. He retired on October 4, 1991. The employing establishment controverted appellant's claim.

The Office initially denied appellant's claim by decision dated December 15, 2006 on the grounds that it was untimely filed. This case was before the Board on a prior appeal.<sup>1</sup> The Board by decision dated September 26, 2007 found the claim was timely filed and remanded the case for further development because the evidence of record did not establish that appellant was aware or should reasonably have been aware of the causal relationship between his hearing loss and his federal employment until April 24, 2006. The facts as set forth in the Board's previous decisions and orders are hereby incorporated by reference.

Following the Board's remand of the case, the Office referred appellant, with a statement of accepted facts, to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for a second opinion. On October 16, 2007 Dr. Goldberg reported his findings upon examination. He noted that in appellant's medical records, the presence of a mild sensorineural component upon entry into the Tennessee Valley Authority that was preexisting and probably due to prior noise or exposure in the armed services or other exposure doing work as an iron worker. Dr. Goldberg diagnosed appellant with bilateral sensorineural hearing loss, worse on the right side, which he attributed to presbycusis rather than noise-induced hearing loss during employment.

By decision dated November 2, 2007, the Office denied appellant's claim as the evidence of record failed to demonstrate that the claimed medical condition was related to the established work-related events.

Appellant requested reconsideration by request dated December 26, 2007. He submitted an April 24, 2006 report from an audiogram. Appellant submitted a report from an audiogram conducted on December 4, 2007. He also submitted a December 4, 2007 medical note, signed by Dr. F. Allen Long, a Board-certified otolaryngologist, who noted that appellant had a history of hearing loss over the past two years. Dr. Long recommended appellant consider hearing aids in view of his significant high frequency sensorineural hearing loss.

By decision dated January 16, 2008, the Office denied modification of its November 2, 2007 decision as the evidence of record failed to establish that appellant's hearing loss was caused by factors of appellant's employment.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which

---

<sup>1</sup> Docket No. 07-1305 (issued September 26, 2007).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To establish a causal relationship between the condition and the employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

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 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.<sup>6</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>7</sup>

### ANALYSIS

Appellant claimed he sustained bilateral hearing loss due to factors of employment on or before April 24, 2006. However, the evidence of record lacks any opinion on the causal relationship between any diagnosed hearing loss and appellant's federal employment.<sup>8</sup>

Dr. Long's medical report contains no diagnosis and no rationalized medical opinion concerning the causal relationship between appellant's alleged hearing loss and factors of his employment. Similarly, while Dr. Goldberg's October 16, 2007 medical report furnished a diagnosis of bilateral sensorineural hearing loss it did not identify any of the job duties appellant performed at the employing establishment which he believed were responsible for appellant's hearing loss or explain how he attributed appellant's hearing loss to presbycusis, gradual impairment of hearing as part of the aging process, rather than employment-related noise-induced hearing loss.

---

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *Id.*

<sup>6</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>7</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>8</sup> The Board notes that appellant submitted a collection of audiograms conducted during and after his employment. However, the Board has held that if an audiogram is prepared by an audiologist it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990). As none of the audiograms submitted by appellant appear to have been certified by a physician, they are of no probative value.

The Board has consistently held that medical reports lacking a rationale on causal relationship have little probative value.<sup>9</sup> As noted above, a rationalized medical opinion is based on a complete factual and medical background and is supported by medical rationale.<sup>10</sup> As these reports lack a rationale on causal relationship, they lack probative value and are insufficient to establish that his alleged hearing loss is causally related to his federal employment.

The Office advised appellant that it was his responsibility to provide a comprehensive medical report which described his symptoms, test results, diagnosis, treatment and the doctor's opinion, with medical reasons, on the cause of his condition. Appellant failed to submit sufficient medical documentation in response to the Office's request. Because the medical evidence of record does not explain how his employment duties caused or aggravated his alleged hearing loss, he has not established that he sustained a hearing loss in the performance of duty causally related to factors of employment.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' February 8, 2008 decision is affirmed.

Issued: May 11, 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

---

<sup>9</sup> See *Mary E. Marshall*, 56 ECAB 420 (2005) (medical reports that do not contain rationale on causal relationship have little probative value).

<sup>10</sup> *Froilan Negrón Marrero*, 33 ECAB 796 (1982).