

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

D.R., Appellant)	
)	
and)	
)	
DEPARTMENT OF AGRICULTURE, FOOD)	Docket No. 08-2459
SAFETY & INSPECTION SERVICE,)	Issued: May 7, 2009
Pico Rivera, CA, Employer)	
)	

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 September 11, 2008 appellant timely appealed the August 26, 2008 merit decision of the Office of Workers' Compensation Program, which denied his claim for wage-loss compensation. 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 was disabled on or after May 27, 2006 due to his employment-related hearing condition.

FACTUAL HISTORY

Appellant, a 73-year-old retired veterinary medical officer, has an accepted claim for bilateral/binaural noise-induced hearing loss.¹ He received schedule awards for a combined 60 percent binaural hearing loss. The most recent award, dated March 1, 2007, covered a period of 40 weeks from December 15, 2006 through September 20, 2007. In October 2007, appellant filed a claim for compensation (Form CA-7) and a notice of recurrence (Form CA-2a), the latter of which alleged disability beginning May 27, 2006.² He claimed that he retired on May 27, 2006 because he could no longer perform his regular job duties around machinery noise.

Dr. Natee Poopat, a Board-certified otolaryngologist, examined appellant on November 29, 2007 and diagnosed severe sensorineural hearing loss bilaterally. He indicated that the condition was “most likely secondary to [appellant’s] history of noise exposure on the job.”³ Dr. Poopat further noted that appellant’s condition would make it “virtually impossible to work in an environment with high background noise.” He also submitted a December 20, 2007 work capacity evaluation (Form OWCP-5c). Dr. Poopat noted that appellant was incapable of performing his usual job because his “severe hearing loss interferes with communication [on the job].” However, he indicated that appellant could work an eight-hour day. The only reported physical limitation was climbing. Dr. Poopat also remarked that appellant had a “severe hearing loss affecting safety when communication is critical.”

In a December 7, 2007 statement, the employing establishment refuted appellant’s contention that his hearing condition prevented him from performing his regular job duties. Appellant reportedly spent most of his time in the “USDA office ... that did not expose him to loud noises.” He was observed using both landline and cellular telephones. Appellant was also seen conducting weekly meetings with plant managers and work unit meetings with inspectors. He also reportedly performed residue testing and sampling, performed ante-mortem inspections, correlated with inspectors’ post-mortem inspections, conducted humane handling activities and reviewed inspectors’ written documentation.

By decision dated February 27, 2008, the Office denied appellant’s claim for wage-loss compensation beginning May 27, 2006. Appellant subsequently requested a review of the written record.

In a March 1, 2008 report, Dr. Poopat stated that appellant’s November 29, 2007 test results indicated that he had a hard time communicating in a face-to-face setting in a quiet room. He further noted that this level of hearing loss would make it virtually impossible, even with hearing aids, for appellant to communicate in an environment with any significant level of background

¹ Appellant has two hearing loss claims that have been accepted by the Office. The initial injury arose on or about June 27, 2000 (xxxxxx018). Appellant continued to work thereafter and sustained further injury on or about April 4, 2003 (xxxxxx137). He retired effective May 27, 2006. Claim number xxxxxx018 has been designated the master file.

² The timing of the filing coincided with the expiration of appellant’s latest schedule award. Appellant wanted to continue to receive benefits from the Office and convert his regular retirement benefits into wage-loss compensation for total disability.

³ Dr. Poopat noted a history of exposure to loud noise -- “heavy machinery.”

noise. According to Dr. Poopat, appellant's bilateral hearing loss would improve only marginally with the strongest hearing aids. He also noted that excessive humidity, which was a reported environmental factor of appellant's job, would limit his ability to use hearing aids effectively. Dr. Poopat further commented that appellant's inability to communicate clearly and efficiently would make the work environment unsafe, particularly when working around machines with moving parts. He also stated that appellant's ability to work in an office setting would depend on the job description. Dr. Poopat explained that appellant would not be able to communicate efficiently on the telephone and would not be able to communicate very well with other office staff. But if those restrictions did not affect his ability to perform an office job, then appellant could potentially work.

On March 6, 2008 Dr. Vernal M. Hansen, a family practitioner, advised that appellant had been given a work excuse for the period April 12 through May 27, 2006 because of "illness [and] stress."

On August 26, 2008 the hearing representative affirmed the denial of appellant's claim for wage-loss compensation beginning May 27, 2006.

LEGAL PRECEDENT

A claimant has the burden of establishing the essential elements of his claim, including that the medical condition for which compensation is claimed is causally related to the employment injury.⁴ For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling.⁵ The evidence submitted must be reliable, probative and substantial.⁶

ANALYSIS

Appellant claims to have been disabled beginning May 27, 2006 as a result of his employment-related hearing condition. However, he did not provide any contemporaneous medical evidence demonstrating an employment-related disability on or about May 27, 2006. Dr. Hansen, appellant's family physician, indicated that appellant had been excused from work between April 12 and May 27, 2006 because of "illness [and] stress." However, he did not identify the cause of the "illness [and] stress," nor did he indicate that appellant was disabled for work subsequent to May 27, 2006.

Some 18 months after appellant's retirement, Dr. Hansen referred him to Dr. Poopat. There is no medical evidence from the end of May 2006 through November 2007 that definitively establishes an employment-related disability. Moreover, when Dr. Poopat saw appellant on November 29, 2007, he did not directly attribute the diagnosed hearing loss to appellant's prior employment exposure. He only noted that the condition was "most likely secondary to [appellant's] history of noise exposure on the job." The only occupational exposure noted in either of

⁴ 20 C.F.R. § 10.115(e) (2008); see *Tammy L. Medley*, 55 ECAB 182, 184 (2003).

⁵ 20 C.F.R. § 10.115(f).

⁶ *Id.* at § 10.115.

Dr. Poopat's reports was as follows: "Pertinent history includes [history] of exposure to loud noise (heavy machinery)."⁷

The gist of Dr. Poopat's opinion regarding disability and work limitations is that appellant's severe hearing loss interferes with his ability to communicate, which in turn represents a safety issue where "communication is critical." But Dr. Poopat has not demonstrated even a basic understanding of appellant's various job duties. Without a thorough understanding of appellant's duties, his opinion regarding disability is speculative at best and not particularly probative. Accordingly, the medical evidence of record does not establish that appellant was totally disabled on or after May 27, 2006.

CONCLUSION

Appellant failed to establish that he was disabled beginning May 27, 2006 due to his employment-related hearing condition.

ORDER

IT IS HEREBY ORDERED THAT the August 26, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 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

⁷ Causal relationship is a medical question, which generally requires rationalized medical opinion evidence to resolve the issue. See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factors must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's 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.*