United States Department of Labor
Employees' Compensation Appeals Board

F.M., Appellant	)	
and	)	**Docket No. 09-758**
	)	**Issued: October 9, 2009**
TENNESSEE VALLEY AUTHORITY, WIDOWS CREEK FOSSIL PLANT, Chattanooga, TN, 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
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 26, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' December 9, 2008 merit decision, denying his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish that he sustained a hearing loss in the performance of duty

FACTUAL HISTORY

On August 29, 2008 appellant, a 61-year-old yard equipment technician, filed an occupational disease claim alleging that he sustained a bilateral hearing loss as a result of work-related noise exposure. He first realized that his hearing loss was employment related on January 1, 2001. Appellant did not stop working.

On September 5, 2008 the Office informed appellant that the information submitted was insufficient to establish his claim. Appellant was advised to submit additional information and evidence describing his exposure to noise in his federal employment, as well as audiograms and a physician's report explaining how the alleged hearing loss was causally related to employment-related noise exposure. The Office also asked the employing establishment to provide a statement describing appellant's exposure to noise and copies of all audiograms performed during his federal employment.

The employing establishment provided audiologists' reports dated November 15, 1974 to May 19, 2008 reflecting bilateral hearing loss. Appellant's November 15, 1974 audiogram was signed by J. Carter, a registered nurse. The remaining audiologist reports of record were either unsigned or contained signatures by unidentified individuals.

The employing establishment submitted a September 4, 2008 review of appellant's medical record signed by Cassie Miles, a registered nurse. Appellant was hired in 1974 with a hearing loss in the right ear, due to previous noise exposure during employment at a knitting mill and in the U.S. Navy. He worked in 1988, after which he had a 10-year break in employment before being rehired in 1998. Ms. Miles reported that current audiograms showed a 24 percent impairment of the right ear, but only minor loss in the left ear.

Appellant provided a work history reflecting that he was employed as a machine fixer in a knitting mill from 1965 to 1972; by the U.S. Navy from 1972 to 1974; as a heavy equipment and crane operator for the employing establishment from 1975 to 1988; as a crane operator for a private employer from 1988 to 1998; and as a heavy equipment operator for the employing establishment from 1998 to the present. He acknowledged that he was exposed to loud noise in his job involving knitting machines and that he wore no hearing protection. Appellant stated that he was exposed to normal gunfire noise from 16 millimeter (mm) rifles and 50 caliber machine guns during military training. He was exposed to significant loud noise during his federal employment, including chain saws, jack hammers, core drills, cranes, fork lifts and bulldozers. Appellant stated that he was required to wear ear protection during his federal employment.

In an October 14, 2004 form report, Dr. Jory S. Simmons, an employing establishment physician, indicated that appellant's recent hearing test was "outside our normal reference ranges" and recommended a referral to an audiologist.

The Office referred appellant, a copy of his medical record and a statement of accepted facts (SOAF), to Dr. Joseph A. Motto, a Board-certified otolaryngologist, for a determination as to whether appellant's hearing loss was caused by employment-related noise exposure.[1] In a November 25, 2008 report, Dr. Motto reported the results of a November 11, 2008 audiogram, noting responses of 0, 15, 25 and 50 decibels at 500, 1,000, 2,000 and 3,000 hertz (Hz) in the left ear and 20, 25, 45 and 60 decibels at those levels in the right ear. He diagnosed bilateral high-frequency sensorineural hearing loss, which he opined was not due to employment-related

[1] The October 9, 2008 SOAF indicated that, prior to appellant's federal employment, he worked in private industry as a machine fixer, where he was exposed to occupational noise and was provided with no hearing protection. Appellant was also exposed to gunfire from 16 mm rifles and 50 caliber machine guns and heavy equipment during his tenure with the U.S. Navy.

noise exposure. Rather, Dr. Motto stated that appellant's recreational activities and nonwork-related medical conditions were responsible for his hearing loss. He noted that appellant was employed with a high-frequency hearing loss centered at 3,000 Hz in the right ear. Dr. Motto stated that appellant's recreational hunting until 1984 (approximately 10 times per year) would explain the higher degree of hearing loss in the right ear versus the left ear, given the fact that appellant was right-handed. He opined that appellant's lower-frequency hearing loss was due to his medical conditions of hypertension and hypercholesterol.

On December 2, 2008 the district medical adviser reviewed the medical evidence . She agreed that appellant's hearing loss was not due to work-related noise exposure, but rather was due to recreational firearm use.

By decision dated December 9, 2008, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his hearing loss was causally related to established work-related noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his 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 the injury was sustained 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. 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.[2]

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) 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is 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.[3]

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Solomon Polen*, 51 ECAB 341 (2000).

An award of compensation may not be based on surmise, conjecture or speculation. Neither, the fact that appellant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by his employment, is sufficient to establish a causal relationship.[4] The mere fact that a disease or condition manifests itself or worsens during a period of employment[5] or that work activities produce symptoms revelatory of an underlying condition[6] does not raise an inference of causal relation between the condition and the employment factors.

ANALYSIS

It is not disputed that appellant was exposed to work-related noise in the course of his federal employment. However, the weight of the medical evidence does not establish that his hearing loss is causally related to his employment-related noise exposure.

Appellant submitted various audiogram results reflecting bilateral hearing loss. However, none of the audiograms were accompanied by a physician's discussion of the employment factors believed to have caused or contributed to his hearing loss. Thus, these reports and audiograms from audiologists do not constitute probative medical evidence.[7]

On October 14, 2004 Dr. Simmons, an employing establishment physician, advised that appellant's recent hearing test was "outside our normal reference ranges" and recommended a referral to an audiologist. Dr. Simmons did not offer any opinion regarding the cause of appellant's condition and is therefore of limited probative value.[8]

The Office's second opinion physician examined appellant, reviewed the entire medical record and SOAF and reported the results of a November 11, 2008 audiogram. Dr. Motto diagnosed bilateral high frequency sensorineural hearing loss, which he attributed to recreational activities and nonwork-related medical conditions. He stated that appellant's recreational hunting 10 times per year until 1984, would explain the higher degree of hearing loss in his right ear, given the fact that he was right-handed. Dr. Motto also noted that, when appellant was hired, he already had a high-frequency hearing loss centered at 3,000 Hz in the right ear. He opined that appellant's lower-frequency hearing loss was due to his medical conditions of hypertension and hypercholesterol. Based on his examination of appellant and review of the entire record, he concluded that appellant's hearing loss was not causally related to his

[4] *Robert G. Morris*, 48 ECAB 238-39 (1996).

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[7] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See Robert E. Cullison*, 55 ECAB 570 (2004) (the Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist). *See also Herman L. Henson*, 40 ECAB 341 (1988) (an audiologist is not considered a physician under the Act); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

[8] *A.D.*, 58 ECAB ___ (Docket No. 06-1183, issued November 14, 2006); *Michael E. Smith*, 50 ECAB 313 (1999).

employment-related noise exposure. The Board finds that Dr. Motto's report is well rationalized and constitutes the weight of the medical evidence.[9]

Appellant has provided no probative medical evidence, which contains an opinion in support of his position that his bilateral hearing loss was caused by employment-related noise exposure. The Board finds that he failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he developed bilateral hearing loss in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 9, 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

[9] The Board notes that Dr. Motto's reasoning as it relates to appellant's recreational hunting also applies to his use of firearms during military service.