United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 09-2228**
	)	**Issued: August 10, 2010**
DEPARTMENT OF THE ARMY, ARMY NATIONAL GUARD, Smyrna, 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
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 8, 2009 appellant filed a timely appeal of an August 18, 2009 decision of the Office of Workers' Compensation Programs denying his claim for compensation. 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 an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 20, 2009 appellant, then a 59-year-old surface maintenance mechanic, filed an occupational disease claim alleging bilateral hearing loss from hazardous noise exposure in the performance of duty. He first realized that his employment activities caused or aggravated his condition on December 7, 2008. Appellant did not stop work. He began working at the employing establishment in 1985.

On May 1, 2009 the Office advised appellant of factual and medical evidence necessary to establish his claim and allowed him 30 days to submit such evidence.

In an undated statement, appellant summarized his employment history and listed all of the positions held while working for the employing establishment. He indicated that workplace noise exposure came from air impact wrenches, grinders, hammering on metal, generators and wheel and track vehicle engines. Appellant noted no previous hearing problems.

In an August 2, 2008 evaluation report, Dr. Lionel Willoughby, Jr., an employing establishment physician and a pediatrician, diagnosed hearing loss and noted that appellant was fit for duty. In an August 2, 2008 physical evaluation form, a physician's assistant opined that appellant could not work in an assignment with noise levels over 85 decibels. A March 7, 2008 audiogram from the employing establishment found asymmetrical hearing loss when compared to the September 11, 1987 based audiogram.

Also submitted were noise surveys of appellant's work area dated August 24 through 26, 2004. He also submitted an undated industrial hygiene report from the employing establishment.

During a June 22, 2009 telephone conference, appellant stated that his nonfederal employment noise exposure was minimal as he worked as a tire changer and parts mechanic and was exposed to noises from hammers, air wrenches, trucks and hand tools. He noted serving in the military in Vietnam between January 12, 1968 and October 20, 1971 where he repaired bulldozers. Appellant indicated noise exposure to firearms three times during his service. He also indicated his hobby included fishing on a motor boat once or twice a year.

On July 7, 2009 the Office referred appellant with a statement of accepted facts to Dr. Jeffrey Paffrath, a Board-certified otolaryngologist, for a second opinion. In an August 4, 2009 report, Dr. Paffrath found that appellant's ear canals, tympanic membranes and drum motility were normal. He indicated that appellant showed significant asymmetric sensorineural hearing loss concerning medical conditions such as acoustic neuroma or Meniere's disease. Dr. Paffrath recommended a magnetic resonance imaging (MRI) scan of the brain and internal auditory canals to rule out acoustic neuroma or central process to produce the asymmetry. He indicated that appellant may have asymmetrical hearing loss from being a right-handed shooter in Vietnam but that the limited nature of the audiogram obtained previously without high frequency could not clearly show whether appellant had asymmetrical noise-induced pattern. Dr. Paffrath noted that the oldest readable audiogram of record dated September 11, 1987 showed moderate high frequency loss in both ears. He also noted that an August 4, 2009 audiogram showed moderate high frequency sensorineural hearing loss on the right and moderately severe sensorineural hearing loss on the left. Dr. Paffrath opined that, based on the threshold shift calculations, there was no significant shift beyond what would be expected based on presbycusis. He further opined that appellant had the potential for hearing loss based on the amount of noise exposure as indicated in the statement of accepted facts but that he did not show a shift beyond presbycusis. Dr. Paffrath indicated that appellant had a noise-induced pattern of hearing loss on both audiograms but it did not significantly change enough when comparing the 1987 audiogram to the 2009 audiogram to clearly reveal a sensorineural hearing loss from federal employment. He opined that appellant had sensorineural hearing loss with a noise-

induced pattern but none of the hearing loss was related to noise exposure encountered at work. Dr. Paffrath indicated that appellant already had significant hearing loss and that calculations for the threshold shift did not support that noise exposure since 1985 produced a significant amount of loss and shift beyond presbycusis from earlier loss. He explained that his opinion was based on the fact that appellant had no significant standard threshold shift or other etiology for his condition. Dr. Paffrath recommended a hearing aid evaluation and hearing conservation techniques. In an August 4, 2009 otologic evaluation form, he diagnosed sensorineural hearing loss and noted it was not due to work-related noise exposure. An August 4, 2009 an audiogram was performed on Dr. Paffrath's behalf.

In an August 18, 2009 decision, the Office denied appellant's claim finding that the medical evidence did not demonstrate that the claimed medical condition was related to the established work-related events. It also found that the medical evidence did not establish that appellant sustained hearing loss as a result of exposure to noise in his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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. 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.[1]

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.[2]

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,

[1] *J.E.*, 59 ECAB ___ (Docket No. 07-814, issued October 2, 2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

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.[3]

ANALYSIS

The record reflects that appellant worked as a surface maintenance mechanic with workplace noise exposure from air impact wrenches, grinders, hammering, generators and wheel and track vehicle engines. However, the medical evidence is insufficient to establish that such noise exposure caused or aggravated the claimed hearing loss.

In an August 4, 2009 report, Dr. Paffrath's examination findings revealed normal ear canals, tympanic membranes and drum motility. He opined that, although appellant demonstrated sensorineural hearing loss, it was not related to noise exposure at work as the shift from the 1987 baseline audiogram to the 2009 audiogram was not beyond presbycusis. Dr. Paffrath explained that appellant already had significant hearing loss prior to the 1987 audiogram, the oldest readable audiogram and that the shift in the present audiogram was not a significant amount or beyond presbycusis. He further explained that appellant did not have any other etiology for his condition. Therefore, Dr. Paffrath's findings did not support work-related hearing loss. As he provided a reasoned opinion supported by the evidence of record and his own findings on examination, his report represents the weight of the medical evidence.[4] There is no medical evidence supporting that appellant has a hearing loss causally related to his civilian federal employment.

The record also contains an August 2, 2008 report from Dr. Willoughby who diagnosed hearing loss and advised that appellant was fit for duty. He did not discuss whether appellant's workplace noise exposure caused or aggravated his hearing loss. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[5]

On appeal, appellant asserts that noise exposure at the employing establishment caused his high frequency hearing loss. As noted, his burden of proof requires the submission of rationalized medical evidence with a physician's opinion on whether his workplace noise exposure caused his hearing loss. As none of the medical evidence of record support work-related hearing loss, they do not support appellant's claim. Appellant further asserts that his claim is supported by hearing tests since April 1979 and that he attached additional medical records with his appeal request. However, the Board may only review evidence that was in the record at the time the Office issued its final decision.[6]

---

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

[4] A physician's opinion on causal relationship between a claimant's disability and an employment injury is not conclusive simply because it is rendered by a physician. To be of probative value, the physician must provide rationale for the opinion reached. *T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009).

[5] *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

[6] *See* 20 C.F.R. § 501.2(c).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 18, 2009 is affirmed.

Issued: August 10, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board