

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

M.V., Appellant

and

**DEPARTMENT OF THE ARMY, ARMY
DEPOT, Corpus Christi, TX, Employer**

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**Docket No. 10-1169
Issued: December 17, 2010**

Appearances:
Randy Wilson, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 24, 2010 appellant filed a timely appeal from a February 8, 2010 merit decision of the Office of Workers' Compensation Programs denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On January 31, 2009 appellant, then a 63-year-old pipefitter, filed an occupational disease claim alleging that he sustained bilateral hearing loss due to high levels of noise in the workplace. He first noticed his condition on June 15, 2004 and realized that it was related to his employment on January 25, 2005. Appellant did not stop working.

In a January 25, 2005 report, Dr. George H. Fisher, a Board-certified otolaryngologist, commented that appellant worked at the employing establishment for many years and

complained of diminished hearing and tinnitus in both ears. He examined appellant and observed no physical abnormalities. Audiometric testing showed mild to moderate hearing loss in the left ear and mild to severe loss in the right ear, resulting in pure tone averages of 33 and 32 decibels (dBA) in the left and right ear, respectively. Dr. Fisher diagnosed bilateral neurosensory hearing loss.

In a June 4, 2008 report, Dr. Fisher noted appellant's 25-year history of working around noisy machinery and impact wrenches at the employing establishment and his gradual hearing loss and tinnitus in the past eight to 10 years. No irregularities were detected in appellant's physical examination. Audiometric testing revealed bilateral neurosensory hearing loss above 1,000 hertz (Hz) and pure tone averages of 32 and 30 dBA in the left and right ear, respectively. Dr. Fisher diagnosed moderate bilateral neurosensory hearing loss and opined that the injury was most likely due to appellant's exposure to high-intensity noise over the last 25 years. His July 8, 2008 note stated that appellant's severe, noise-induced bilateral neurosensory hearing loss hindered his ability to perform jury duty.

An undated medical form from Dr. Larry Grabhorn, an employing establishment physician Board-certified in aerospace medicine, commented that appellant had significant high-frequency hearing loss attributable to noise exposure in the military before he was hired by the employing establishment in 1984, which worsened since then. Dr. Grabhorn answered "yes" to a question asking whether appellant sustained a work-related hearing loss, adding that, "if there is evidence that his progressive loss is due to nonwork exposures, we do n[o]t have it."

Appellant and the employing establishment provided audiograms for the period June 20, 1984 to February 24, 2009. His June 20, 1984 preemployment audiogram exhibited moderate to profound hearing loss at all frequencies in the left ear and moderate to severe hearing loss at frequencies at or above 3,000 Hz in the right ear.

A March 11, 2009 statement of accepted facts listed that appellant worked for the employing establishment since 1984 in several capacities, including warehouse worker, production machinist mechanic, sheet metal worker and pipefitter. It also accepted that he used earplugs and was exposed to noise levels of unknown dBA from impact wrenches, truck engines, oil rigs, welding machines and other large tools used for heavy equipment repair approximately 40 hours a week.

On March 19, 2009 the Office referred appellant for a second opinion to Dr. Paul W. Loeffler, a Board-certified otolaryngologist.

In an April 2, 2009 report, Dr. Loeffler reviewed the statement of accepted facts and commented that appellant complained of bilateral tinnitus and gradual hearing loss since 2005. He noted that appellant's June 20, 1984 preemployment audiogram showed significant binaural hearing loss, the degree of which did not change beyond what was expected from presbycusis. Dr. Loeffler performed a physical examination and observed normal pinnae and canals, air conduction greater than bone conduction, and good clinical speech reception. The audiometric evaluation showed normal hearing in both ears at frequencies at or below 1,000 Hz and moderate losses in both ears ranging from 50 to 70 dBA at higher frequencies. Dr. Loeffler compared these results with appellant's June 20, 1984 audiogram and found little change in his hearing

threshold. He diagnosed appellant as having hearing loss and tinnitus and opined that appellant's condition was probably more related to military and preemployment noise exposure based on the examination and review of previous audiograms. Dr. Loeffler stated that appellant's history, his audiograms and review of previous records were the reason for his opinion that appellant's hearing loss was not work related.

On April 29, 2009 an Office medical adviser reviewed Dr. Loeffler's April 2, 2009 report and agreed that appellant's employment-related noise exposure was not a contributing factor to appellant's hearing loss.

By decision dated August 12, 2009, the Office denied appellant's claim on the grounds that the weight of the medical evidence did not demonstrate a causal relationship between his diagnosed condition and work-related exposure.

Appellant requested reconsideration on January 29, 2010. He also submitted a January 29, 2010 statement from his representative asserting that appellant still experienced difficulty with his hearing loss and was in the process of having a third evaluation performed by an independent physician.

By decision dated February 8, 2010, the Office denied modification of its August 12, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions 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 upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184, 188 (2007).

condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.⁶

ANALYSIS

The evidence supports that appellant was routinely exposed to noise generated by impact wrenches, truck engines, oil rigs, welding machines and other large tools used for heavy equipment repair for a 25-year period. The evidence also supports that he has binaural hearing loss; however, the weight of the medical evidence does not establish that his hearing loss is causally related to work-related noise exposure.

In developing the claim, the Office referred appellant to Dr. Loeffler for a second opinion. In his April 2, 2009 report, Dr. Loeffler reviewed the statement of accepted facts, appellant's history, prior medical and audiological records, and the results of appellant's April 2, 2009 physical examination and audiometric testing. He observed that appellant sustained significant, preemployment binaural hearing loss based on a June 20, 1984 audiogram. Dr. Loeffler noted that appellant's hearing loss had not advanced beyond what was expected from presbycusis. He compared the June 20, 1984 and April 2, 2009 audiograms and noted that appellant's hearing threshold held stable over time. Dr. Loeffler concluded that appellant sustained hearing loss before he began work at the employing establishment in 1984, specifically due to noise exposure as a military serviceman. Since appellant's history, audiograms, and other records did not suggest otherwise, he ruled out occupational noise exposure as the cause of appellant's condition. An Office medical adviser also concurred with Dr. Loeffler's opinion.

Appellant, on the other hand, has not submitted sufficient medical opinion evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure. Dr. Fisher pointed out in his June 4, 2008 report that appellant worked around noisy machinery and impact wrenches at the employing establishment since 1984 and sustained gradual hearing loss and tinnitus between 1998 and 2000. Based on appellant's history and audiometric testing, he diagnosed moderate bilateral neurosensory hearing loss and concluded that the condition was most likely due to appellant's exposure to high-intensity noise. Although Dr. Fisher noted that appellant worked in a noisy environment for 25 years and concluded that his hearing loss was the result of 25 years of high-intensity noise exposure, he did not specifically relate appellant's condition to his federal employment. To the extent that his opinion supports causal relationship, Dr. Fisher did not offer sufficient medical reasoning addressing how appellant's employment caused or aggravated her condition. The fact that appellant's condition became apparent during

⁵ See *R.R.*, 60 ECAB ____ (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁶ *I.J.*, 59 ECAB 408, 415 (2008); *Woodhams*, *supra* note 3 at 352.

a period of employment does not establish causation.⁷ Dr. Fisher did not explain the reasons why appellant's hearing loss would be due to workplace noise exposure. His January 25, 2005 report and July 8, 2008 note are also of limited probative value since neither provided any medical opinion as to the cause of appellant's condition.⁸

Dr. Grabhorn's undated report briefly addressed causal relationship when he answered "yes" to a form question asking whether appellant sustained a work-related hearing loss. He added that, if there was evidence that his progressive loss was due to nonwork exposures, he was not aware of it. Dr. Grabhorn's stated that appellant's high-frequency hearing loss, though originally attributable to noise exposure in the military prior to 1984, worsened after he joined the employing establishment. A medical opinion not fortified by medical rationale is of little probative value.⁹ Dr. Grabhorn did not provide sufficient reasoning to explain the pathophysiological process by which occupational noise worsened appellant's preexisting condition. His "yes" response and assertion that he was unaware of other causes of the hearing loss is insufficient to establish causal relationship.¹⁰

The Board finds that the weight of the medical evidence does not establish that appellant's hearing loss was caused or aggravated by work-related noise exposure. Accordingly, the Board finds that appellant did not establish his claim.

CONCLUSION

The Board finds that appellant did not establish that he sustained an occupational disease in the performance of duty.

⁷ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁸ *E.K.*, 61 ECAB ___ (Docket No. 09-1827, issued April 21, 2010) (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).

⁹ *See George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹⁰ *See Alberta S. Williamson*, 47 ECAB 569 (1996) (an opinion on causal relationship consisting only of a physician checking "yes" on a medical form report without further explanation or rationale is of little probative value).

ORDER

IT IS HEREBY ORDERED THAT the February 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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