

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GERALD NICHOLL and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 96-674; Submitted on the Record;
Issued February 25, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On July 4, 1993 appellant, a 37-year-old insulator, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a hearing loss causally related to factors of his federal employment. Appellant stated that he first became aware he had sustained a hearing loss on June 18, 1993, when he was informed by a physician from the employing establishment that his hearing was "bad" and that he needed hearing aids. Accompanying the claim form was a handwritten letter from appellant describing his employment history and indicating that he had been exposed to loud noise with the employing establishment. The employing establishment submitted two letters, received by the Office on August 2, 1993, which corroborated this information, in addition to medical records and notes documenting hearing tests appellant underwent over the ten-year period in which he worked for the employing establishment.

In an August 31, 1993 letter, the Office of Workers' Compensation Programs informed the employee that he had to submit additional information in support of his hearing loss claim. The Office requested that he provide a complete history of his exposure to loud noise with the employing establishment, a medical report documenting his hearing loss, and how specific work factors or incidents contributed to his condition. Appellant complied with this request in a letter from his authorized representative dated October 26, 1993.

The Office sent a letter to appellant's employer on August 31, 1993, requesting a copy of his position description and physical requirements of his job, plus the decibel and frequency levels of appellant's work station. In a letter received by the Office on September 24, 1993, the employing establishment complied with the Office's request, indicating that the decibel and frequency level was unknown. Accompanying the letter was a copy of appellant's job description as an insulator.

In a letter dated March 28, 1994, the Office referred appellant and a statement of accepted facts to Dr. Herbert Kean, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of appellant.

The audiologist performing the April 28, 1994 audiogram for Dr. Kean noted findings on audiological evaluation. At the frequencies of 500, 1,000, 2,000, and 3,000 hertz, the following thresholds were reported: right ear - 10, 10, 25, and 45 decibels; left ear - 10, 10, 15, and 45 decibels.

In a May 19, 1994 medical report, Dr. Kean stated that appellant's hearing test showed normal hearing in the speech frequencies bilaterally with a mild hearing loss at 3,000 Hz symmetrically, but that based on his review of appellant's past records there had been no significant change in his hearing since his pre-employment audiogram. Dr. Kean opined that appellant's present hearing pattern did not result from his employment with the employing establishment.

On May 31, 1994 an Office medical adviser concurred with Dr. Kean that appellant did not have a ratable hearing loss causally related to his employment. Hearing aids were not recommended.

In a decision dated and finalized June 21, 1994, the Office found that appellant had not suffered an employment-related hearing loss based on the medical evidence of record.

In a letter dated July 21, 1994, appellant's authorized representative requested a hearing based on the Office's June 21, 1994 decision denying compensation for hearing loss.

In a letter to appellant's representative dated August 4, 1994, the Office denied appellant's request for a hearing because it was untimely.

In a letter faxed to the Office June 21, 1995, appellant's representative requested reconsideration of the Office's June 21, 1994 decision. Accompanying the letter were the results of audiograms appellant underwent on June 18, 1993 and August 18, 1994.

By decision dated and finalized on September 19, 1995, the Office denied reconsideration of its initial decision of June 21, 1994. In a memorandum to the Director dated September 18, 1995, the claims examiner stated that the new medical evidence submitted by appellant contained no medical opinion regarding whether appellant's hearing loss was causally related to exposure to hazardous noise in his employing establishment, and was therefore insufficient to warrant modification of the prior decision. The Office concluded that appellant did not sustain an employment-related hearing loss and denied compensation.

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

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 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

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 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 the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence.

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 appellant'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 appellant, 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 appellant.⁴

The Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁵ and appellant has not submitted medical evidence to establish that the employment incident caused a personal injury.

In his May 19, 1994 report, Dr. Kean reviewed audiometric testing performed on his behalf, reviewed appellant's medical and audiological records, and noted findings on examination. Dr. Kean opined that appellant's hearing test showed normal hearing, that based on a review of his past records there had been no significant change in appellant's hearing since

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

⁴ *Id.*

⁵ *See John J. Carlone*, 41 ECAB 353 (1989).

his pre-employment audiogram, and that appellant's present hearing pattern, at any rate, did not result from his employment with the employing establishment.

On May 19, 1994 an Office medical adviser concurred with the conclusion of Dr. Kean that appellant did not have a ratable hearing loss related to his employment.

Lastly, the medical evidence submitted by appellant prior to the September 19, 1995 decision does not contain a medical opinion indicating that appellant's hearing loss was caused by specific factors of employment. The August 18, 1994 audiogram results from Dr. William M. Keane, a Board-certified otolaryngologist, depicted graphic results from an audiogram administered on August 18, 1994 but did not calculate the results at a frequency of 3,000 Hz; therefore, the claims examiner properly noted that they were not suitable for an evaluation of employment-related hearing loss. In addition, the June 18, 1993 test results showed no ratable hearing loss.

Consequently, the Board finds that the Office properly determined that appellant did not sustain a ratable hearing loss caused by factors of his federal employment.

The September 19, 1995 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
February 25, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member