

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCIEN STANLEY DUBE and DEPARTMENT OF THE NAVY,
PORTSMOUTH NAVAL SHIPYARD, Portsmouth, N.H.

*Docket No. 97-787; Submitted on the Record;
Issued September 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On February 2, 1996 appellant, then a 48-year-old nuclear engineering technician, filed an occupational disease claim alleging that he sustained a hearing loss due to exposure to loud noise at work. In a July 11, 1996 decision, the Office of Workers' Compensation Programs rejected appellant's claim on the grounds that fact of injury was not established.

Appellant requested reconsideration and submitted factual statements regarding his exposure to noise and the lack of hearing problems of family members. The Office denied the request for review on October 30, 1996.

The Board finds that appellant has not established that he sustained a hearing loss due to factors of his employment.

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 he 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

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

In the instant case, appellant has established that he is an employee of the United States and that his claim was timely filed. However, he has not established that he sustained an injury in the performance of duty as alleged.

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;³ (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁴ 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.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion 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 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,⁶ must be one of reasonable medical certainty,⁷ 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.⁸

In a June 15, 1996 medical report, Dr. Sieu Tso, a Board-certified otolaryngologist to whom the Office had referred appellant, diagnosed bilateral high frequency hearing loss. However, he indicated that appellant's hearing loss was not due to noise exposure at work. Dr. Tso stated that the statement of accepted facts noted that appellant mainly had been exposed to high noise levels for the first 10 years of his employment with the employing establishment, from 1975 to 1985, but that from 1985 to 1996 his noise exposure had been greatly reduced.⁹ He noted that since appellant's hearing had been normal from 1980 to 1984, and that his medical records reflected a subsequent slow deteriorating high frequency hearing loss, that "it can be

³ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979).

⁵ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁶ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ The statement of accepted facts noted that appellant was exposed to minimal hazardous noise levels from 1975 to 1978; but that from 1978 to 1985 appellant was exposed to noise levels up to 95 decibels for no longer than 30 minutes a day and up to 90 decibels for no longer than 30 minutes a day; and that from 1985 to 1996, he was exposed to no higher than 90 decibels for no longer than 30 minutes a day.

assumed that his hearing loss is not a result of exposure at work.”¹⁰ Dr. Tso noted that his conclusion was supported by the fact that appellant’s hearing loss continued after he was moved to a quieter work environment after 1985. His report, with his rationalized explanation, shows that appellant’s hearing loss was not causally related to noise exposure at work. There is no medical evidence of record that would support appellant’s claim that his hearing loss was causally related to noise exposure at work. Appellant therefore has not met his burden of proof.¹¹

The decisions of the Office of Workers’ Compensation Programs dated October 30 and July 11, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ Audiogram test results from 1980 through 1984 revealed normal hearing levels. However, audiogram test results from 1985 to 1992 revealed deteriorating hearing loss, greater in the left than in the right ear. There was no test result from 1991.

¹¹ Appellant’s subsequent request for reconsideration was denied by the Office in a nonmerit decision dated October 30, 1996.