

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PETER FACISZEWSKI and DEPARTMENT OF THE ARMY,  
COMMANDER/ROCK ISLAND ARSENAL, Rock Island, IL

*Docket No. 98-2405; Submitted on the Record;  
Issued March 14, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that his hearing loss is causally related to factors of federal employment.

The Board has duly reviewed the case record and finds that appellant has not established that his hearing loss is causally related to factors of federal employment.

On March 29, 1996 appellant, then a 63-year-old engineer, filed an occupational claim for a hearing loss. He was an engineer since July 1973, and estimated that his exposure to noise from July to November 1973 was a half hour per month, from September 1979 to August 8, 1990 fifteen minutes per month and from August 1990 to the present six minutes per month. Appellant wore ear plugs throughout these time periods.

The Office of Workers' Compensation Programs referred appellant to Dr. George T. Demos, a Board-certified otolaryngologist, to determine whether appellant's hearing loss was work related. In a report dated May 23, 1996, Dr. Demos considered appellant's history of injury and performed audiometric tests which showed a bilateral symmetrical high frequency sensorineural hearing loss. He noted that contrary to the statement of accepted facts, appellant stated that he had been a mechanical engineer since November 1966, that his exposure to noise began at that time, and he wore hearing protection in the latter part of the seventies but not in the earlier part of his career. Dr. Demos noted that appellant had less exposure to noise from 1973 to the present than he did prior to 1973. He stated that, since appellant's noise exposure in recent years had been quite minimal according to his statements and those of his supervisors, he could not attribute significant hearing loss to that exposure. Dr. Demos noted that appellant was 60 years old in 1993 and 64 years old when the February 18, 1997 audiogram was performed in his office. He concluded that appellant's hearing loss was gradual and was due to advancing age rather than any history of noise exposure. Dr. Demos stated that a characteristic of noise-induced hearing loss is that the loss is usually worse at the frequency of 4,000 hertz (Hz) and then tends to improve at frequencies higher than 4,000 Hz and that appellant's sensorineural high frequency loss was essentially the same since it was first noted with minor variation and was not typically better at the higher frequency of 8,000 Hz.

By decision dated June 12, 1997, the Office denied appellant's claim, stating that the medical evidence was not sufficient to establish that his condition was caused by the employment factor.

By letter dated October 22, 1997, appellant requested reconsideration of the Office's decision. He submitted a copy of Dr. Demos' May 23, 1996 report and medical evidence including audiograms showing the condition of his hearing, all of which had previously been submitted.

By decision dated November 10, 1997, the Office denied appellant's request for reconsideration.

By letter dated May 7, 1998, appellant requested reconsideration of the Office's decision and submitted a report from Dr. Sandra A. Gabbard, a professor and Ph.D in otolaryngology. In her report, Dr. Gabbard considered the results of a March 18, 1998 audiogram and appellant's history of injury. She noted that appellant's exposure to noise decreased from ½ hour per month from 1973 to 1979 to 15 minutes per month from 1979 and continuing, while using ear protection. Dr. Gabbard stated that, while appellant's hearing loss continued to progress, his noise exposure time was minimal and that "the missing piece in the equation" was the intensity of the noise. She stated:

"Typically, this minimal time of exposure while using ear protection would not leave the worker at risk for noise induced hearing loss. Without the environmental noise measurements from [appellant's] work environment, it is impossible to say with absolute certainty that none of his hearing loss could be attributed to noise exposure. The degree, configuration and type of hearing loss also do not rule out this possibility. I would suspect, however, that the majority of his loss is probably due to factors other than work[-]related noise."

By decision dated July 13, 1998, the Office denied appellant's request for modification.

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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, generally, is 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 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 appellant.<sup>1</sup>

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<sup>1</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

In the present case, appellant has presented insufficient medical evidence to establish his claim. In his May 23, 1996 report, based on his history of appellant's injury and audiometric testing, the referral physician, Dr. Demos, opined that appellant's hearing loss was gradual and due to advancing age rather than any noise exposure history. In her April 17, 1998 report, Dr. Gabbard considered appellant's history of injury and performed audiometric testing. She stated that absent environmental noise measurements from appellant's work environment, appellant was unable to say with absolute certainty that none of appellant's hearing loss could be attributed to noise exposure. She stated that the "degree, configuration and type of hearing loss ... do not rule out this possibility" but she suspected that the majority of his loss was "probably due to factors other than work[-]related noise." Dr. Gabbard's opinion is equivocal and speculative and therefore is not probative.<sup>2</sup> Further, she is not a physician within the meaning of the Act.<sup>3</sup> Dr. Demos' opinion therefore which is well rationalized constitutes the weight of the evidence and establishes that appellant's hearing loss is not work related. Appellant has therefore failed to establish his claim.

The decisions of the Office of Workers' Compensation Programs dated July 13, 1998 and November 10, 1997 are hereby affirmed.

Dated, Washington, D.C.  
March 14, 2000

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

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<sup>2</sup> See *Alberta S. Williamson*, 47 ECAB 569, 574 (1996); *William S. Wright*, 45 ECAB 498, 504 (1994).

<sup>3</sup> Section 8101(2) includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners." 5 U.S.C. § 8101(2); see *Kathy Marshall*, 45 ECAB 827, 834 (1994).