U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EARL W. ATCHLEY and DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, St. Ignatius, MT

Docket No. 00-1519; Submitted on the Record;
Issued April 20, 2001

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained a hearing loss in the performance of duty.

On December 22, 1999 appellant, then a 79-year-old former supervisor/irrigation system operator, filed an occupational disease claim, alleging that he sustained acute deafness in both ears while operating various items of heavy machinery, including a bulldozer, chain saw and air compressor. Appellant last worked for the employing establishment in February 1979.

By letter dated January 20, 2000, the Office of Workers' Compensation Programs requested further information from appellant. No further evidence was received. On February 28, 2000 the Office issued a decision denying benefits because the evidence of record was insufficient to establish that the alleged hearing loss resulted from appellant's federal employment.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.[2]

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 the employment factors alleged to have caused or contributed to the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Dennis M. Mascarenas*, 49 ECAB 215, 217 (1997); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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.[3]

The medical evidence required to establish a 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,[4] must be one of reasonable medical certainty,[5] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed medical condition and the specific employment factors identified by the claimant.[6]

In this case, appellant has submitted no medical evidence whatsoever to support that he has sustained a hearing loss, or that the employment factors identified by appellant were the proximate cause of the condition claimed.[7] Accordingly, he has not met his burden of proof to establish that he sustained a hearing loss or that this hearing loss was caused by his federal employment.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that the employee's injury occurs during a period of employment, nor the belief that his injury was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.[8]

[3] *Jerry E. Osterman*, 46 ECAB 500 (1995); *see also Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *See Morris Scanlon*, 11 ECAB 384, 384-85 (1960).

[6] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[7] The Board notes that appellant submitted medical evidence after the issuance of the February 28, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

[8] *Alfredo Rodriquez*, 47 ECAB 437 (1996).

The February 28, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 20, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member