

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELOISE G. GARCIA and DEPARTMENT OF THE AIR FORCE,
KELLY AIR FORCE BASE, San Antonio, TX

*Docket No. 00-1003; Submitted on the Record;
Issued February 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet her burden of proof to establish that she sustained a hearing loss in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 are 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 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 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

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Jerry D. Osterman*, 46 ECAB 500 (1995).

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, 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 claimant.⁴

In the present case, on March 16, 1999 appellant, then a 75-year-old machine tool operator, submitted a claim for occupational disease alleging that she had sustained hearing loss causally related to noise exposure in her workplace. In a decision dated August 31, 1999, the Office of Workers' Compensation Programs found that appellant did not submit sufficient medical evidence to establish that she sustained a hearing loss due to employment factors. Appellant requested a review of the written record, and in a decision dated December 20, 1999, an Office hearing representative affirmed the Office's prior denial.

In support of her claim, appellant submitted the results of annual audiograms conducted from 1984 through 1999. While this audiogram evidence does support that appellant has some degree of hearing loss, this evidence is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on the cause of appellant's hearing loss.⁵ The record also contains a May 24, 1999 report from Captain Stephen D. Steele, chief, audiology/hearing conservation, regarding the results of a hearing evaluation performed on April 16, 1999 by the employing establishment. After noting appellant's history of noise exposure and summarizing the test results, Captain Steele concluded that appellant "demonstrated a mild to moderate hearing loss in the right ear and a moderate to severe mixed hearing loss in the left ear" and added that, while appellant's left ear hearing loss was not secondary to hazardous noise exposure, "some of the hearing loss in the right ear could be attributed to the aging factor (presbycusis)." This report is also of diminished probative value, however, as Captain Steele gave no rationale for relating any of appellant's hearing loss to noise exposure at work. Moreover, there is no indication that Captain Steele is a "physician" within the meaning of the Act and therefore competent to give a medical examination or medical opinion.⁶ The record, however, does contain a medical report which indicates that appellant's claimed hearing loss was not related to employment factors. In a report dated May 13, 1999, Dr. R. Nevin Rupp, a Board-certified otolaryngologist to whom the Office referred appellant for otologic and audiologic evaluation, reviewed an audiogram performed on May 13, 1999 on his behalf and found that, while appellant demonstrated a 7.5 percent hearing loss in the right ear and a 67.5 percent hearing loss in the left ear, this hearing loss was not causally related to factors of appellant's employment as it did not fit the pattern for noise-induced hearing loss. Dr. Rupp explained that the type of hearing loss appellant demonstrated, being unilateral and without the 3 to 4 kHz dip in threshold, is not characteristic of noise injury, and further noted that appellant has a small central perforation of the tympanic membrane in her right ear. Consequently, Dr. Rupp concluded that while appellant does have unilateral sensorineural hearing loss, appellant does not

⁴ *Charles E. Evans*, 48 ECAB 569 (1997).

⁵ *Arlonia B. Taylor*, 44 ECAB 591 (1993) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

⁶ *Allen Miles*, 31 ECAB 1894 (1980).

have a noise-induced hearing loss. Dr. Rupp recommended that appellant be further evaluated for acoustic neuroma. On May 28, 1999 an Office medical adviser reviewed Dr. Rupp's report and agreed that there was no evidence to support a noise-induced hearing loss causally related to appellant's federal employment.⁷ Appellant, therefore, has not met her burden to establish that she sustained a hearing loss causally related to her federal employment.

For these reasons, the Office properly denied appellant's claim that she sustained a hearing loss in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated December 20 and August 31, 1999 are affirmed.

Dated, Washington, DC
February 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

⁷ The Office medical adviser also agreed with Dr. Rupp's recommendation that magnetic resonance imaging (MRI) be performed in order to rule out acoustic neuroma. The Office authorized an MRI, and in a follow-up report dated August 6, 1999, Dr. Rupp reported that the results were normal.