

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMMY K. SMITH and DEPARTMENT OF THE ARMY,
SUPPLY DIVISION, Fort Campbell, KY

*Docket No. 00-2781; Submitted on the Record;
Issued July 18, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

On January 14, 2000 appellant, then a 52-year-old supply technician, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained permanent hearing loss while in the performance of duty. Appellant stated that he became aware of his hearing loss on January 4, 1999.

In an accompanying statement, appellant listed his history of employment, indicating that he had been exposed to excessive noise for a 16-year period beginning in 1986 and continuing. Appellant also noted exposure to noise from freezer motors and forklift motors. Appellant indicated that he was issued earplugs when operating this machinery.

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description, employment records, employee medical reports and audiograms performed at the employing establishment. The audiograms dated from August 28, 1989 to January 27, 2000. The audiologist noted on the audiogram dated January 27, 2000 that appellant sustained mild sensorineural hearing loss. The employing establishment indicated that appellant was exposed to noises from loud motors, forklifts (diesel, gas and propane) and warehouse noise on continuous levels of 80 decibels average, for 8 hours per day, 5 days a week.

In a statement of accepted facts dated March 15, 2000, the Office detailed appellant's hazardous noise exposure. Appellant was referred to Dr. Jack Coleman, a Board-certified otolaryngologist for otological examination and audiological evaluation. Dr. Coleman examined and tested appellant on April 17 and May 12, 2000, however, was unable to provide a conclusive opinion regarding the relationship of appellant's hearing loss to his federal employment. He indicated that appellant had poor test responses and reliability. Dr. Coleman indicated that appellant was tested by two different audiologists with two significantly different results.

By letter dated July 13, 2000, the Office referred appellant to Dr. Jeffrey Paffrath, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The Office provided Dr. Paffrath with a statement of accepted facts, available exposure information and copies of all medical reports and audiograms.

In a medical report dated August 1, 2000, Dr. Paffrath indicated that he reviewed the records provided to him and performed an otologic evaluation of appellant and audiometric testing was conducted on the doctor's behalf the same day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 20, 15, 20 and 15 decibels; left ear 20, 15, 20 and 15 decibels. Dr. Paffrath determined that appellant did not have significant hearing loss beyond presbycusis and noted there was no evidence of noise-induced pattern to his loss based on the testing performed August 1, 2000. He further noted that the workplace exposure was not above the Occupational Safety Health Administrations standards for exposure and was, therefore, not of sufficient intensity and duration to have caused the hearing loss in question. Dr. Paffrath noted upon physical examination that appellant had normal tympanic membranes; normal external auditory canals; normal drum mobility; the tuning fork test was normal; the extraocular motions were intact with normal primary gaze alignment; no spontaneous or gaze-induced nystagmus; the cranial nerves II-XII were intact; negative Romberg test; and normal tandem gait. He opined that appellant had very mild sensorineural hearing loss, which was not due to noise exposure encountered in appellant's federal employment. Dr. Paffrath indicated that appellant sustained no loss beyond that expected for presbycusis, which is hearing loss associated with normal aging.

On August 15, 2000 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.¹ The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

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

An employee seeking benefits under the Act has the burden of establishing the essential elements of his or his 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 the 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

¹ 5 U.S.C. §§ 8101-8193.

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

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

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) 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 claimant. The medical evidence required to establish causal relationship is generally 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, 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 instant case, it is not disputed that appellant was exposed to hazardous noise from 1986 to the present in the course of his employment. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged hearing loss is causally related to the employment factors or conditions. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated his hearing loss. The only medical reports submitted were audiograms performed at the employing establishment, which dated from August 28, 1989 to January 27, 2000. The only audiogram noting a hearing loss was dated January 27, 2000 and indicated that appellant sustained mild sensorineural hearing loss. The audiogram noted the tympanogram was normal and speech audiometry was excellent. None of the audiograms were accompanied by a physician's discussion of the employment factors believed to have caused or contributed to the appellant's hearing loss.

Dr. Paffrath's report of August 1, 2000 determined that appellant "did not have significant hearing loss beyond presbycusis," that which is associated with normal aging. He noted there was no evidence of any noise-induced pattern to appellant's hearing loss based on the testing performed. Dr. Paffrath further noted that the noise levels of the work place exposure were not of sufficient intensity and duration to have caused the loss in question. He noted an essentially normal physical examination. Dr. Paffrath opined that appellant had "very mild sensorineural hearing loss ... which was not due to noise exposure encountered in this claimant's federal civilian employment." The Board notes that he had specific knowledge of appellant's employment factors and provided medical rationale for his opinion that appellant's hearing loss was not causally related to appellant's federal employment. The Board finds that Dr. Paffrath's report represents the weight of the evidence.

⁴ *Id.*

There is no other medical evidence providing a specific opinion on causal relationship between appellant's hearing loss and his federal employment. Consequently, the medical evidence did not establish that the hearing loss was due to appellant's federal employment.

The August 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 18, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member