

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GEORGE J. KIENY and DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION, Tyler TX

*Docket No. 00-2231; Submitted on the Record;  
Issued November 14, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

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

This case is on appeal before the Board for the second time. The relevant facts are set forth in that decision. The Board remanded the case for the Office of Workers' Compensation Programs to refer appellant for further testing to rule out an acoustic neuroma of the left ear as a cause of appellant's hearing loss.<sup>1</sup>

On remand the Office referred appellant to Dr. Peter S. Roland, a Board-certified otolaryngologist, together with a statement of accepted facts and the case record, for a second opinion examination. In a November 2, 1999 report, he stated:

“Review of [appellant's] previous audiogram shows he started out with a high frequency loss in about 1989 and over a period of a year or two this developed to a flat sensorineural hearing loss with some improved hearing at 6,000 and 8,000 cycles per second.”

Dr. Roland stated that there is no family history of hearing problems and on external inspection appellant's ears are normal without lesions or masses. He further stated:

“Otosopic examination shows normal external auditory canals and normal tympanic membranes that move appropriately. Audiometric evaluation at our facility shows that he has a flat sensorineural hearing loss at about 60 decibels with some improvement in the highest frequencies. [Appellant] has 80 percent discrimination in [the] [left] ear. His right ear is absolutely normal with normal thresholds at all tested frequencies at octave intervals at 250 to 8,000 cycles per

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<sup>1</sup> Docket No. 98-270 (issued August 11, 1999).

second. [Appellant] has essentially normal immittance audiometry with normal tympanograms, normal static compliances, but no stapedius reflexes.”

Dr. Roland concluded:

“Based on the audiometric configuration of [appellant’s] hearing loss I do not think that this is a noise-induced loss. It has none of the audiometric features of noise-induced hearing loss. I have recommended that he get an MRI [magnetic resonance imaging] scan to rule out the possibility of acoustic tumor. I suspect, however, that it was viral in etiology.”

In a December 7, 1999 radiology report, Dr. James L. Fleckenstein, a Board-certified radiologist, interpreted an MRI of the brain to reveal “[e]cstatic intracranial arteries, in keeping with the sequel of long-standing hypertension. Otherwise, normal enhanced MRI of the brain with specific attention to the posterior fossa and internal auditory canals.”

Dr. Roland found that testing for the left ear at the relevant frequencies (500, 1,000, 2,000 and 3,000 hertz) revealed decibel losses of 60, 60, 60 and 60, respectively. These decibels were totaled at 240 and were divided by 4 to obtain the average hearing loss at those cycles of 60 decibels. The average of 60 was reduced by 25 decibels<sup>2</sup> to equal 35 which was multiplied by the established factor of 1.5 to compute a 52.52 percent<sup>3</sup> loss of hearing for the left ear.<sup>4</sup>

In a December 7, 1999 report, Dr. Roland stated:

“[Appellant] has had an MRI scan which shows no evidence of posterior fossa lesion or other abnormality. He has no hearing loss in his right ear and has a 50 d[ecibel] loss of hearing in the contralateral left ear. [Appellant’s] hearing loss is not related to his employment and is not secondary to noise exposure. His date of maximal medical improvement is the date of his first visit with me which is November 2, 1999. He would benefit from amplification in the left ear. The audiometer was calibrated on April 27, 1999.”

The Office referred Dr. Roland’s report to an Office medical adviser who in a December 20, 1999 report stated:

“I have reviewed the [statement of accepted facts] (February 14 and September 15, 1999) and the medical report of Dr. Peter S. Roland, (M.D. -- ENT). The date of [maximum medical improvement] is November 2, 1999. The [p]ure [t]one [a]udiometry of November 2, 1999 was used as it is the most recent, it meets all [Office standards] and it is an integral part of the evaluation of the

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<sup>2</sup> The first 25 decibels are discounted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.

<sup>3</sup> Rounded to 53 percent.

<sup>4</sup> See A.M.A., *Guides* 224 (4<sup>th</sup> ed. 1993).

consulting etiologist. Based upon the Fourth Edition [of the] A[merican] M[edical] Association [(A.M.A)], *Guides to the Evaluation of Permanent Impairment* and the reports from Dr. Roland, the calculated monaural hearing loss is 53 percent left ear. [He] notes that the hearing loss in the left ear is not compatible with a noise-induced hearing loss because it is unilateral and because the configuration of the loss is not that of a noise-induced loss. It is my opinion that the left ear hearing loss is not job related.”

By decision dated December 30, 1999, the Office denied appellant’s claim for work-related hearing loss in the left ear.

By letter dated January 26, 2000, appellant requested a review of the record by an Office hearing representative. Submitted with his request were a March 6, 1989 audiologic report and audiogram of the same date, which were part of the record from the previous appeal.

By decision dated April 7, 2000, the hearing representative found that the medical evidence of record failed to establish a causal relationship between appellant’s loss of hearing in his left ear and factors of his employment.

The Board finds that appellant has not established a hearing loss in his left ear causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>5</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act and that the claim was filed within the applicable time limitations of the Act.<sup>6</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>7</sup> that the injury was sustained while in the performance of duty<sup>8</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual’s employment.<sup>9</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>10</sup>

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

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<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>8</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>9</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>10</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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, 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, 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.<sup>11</sup>

In this case, there is no dispute that appellant has a hearing loss in his left ear. However, there is no rationalized medical opinion to support a causal relationship between the factors of employment identified by appellant and his left ear hearing loss. The medical evidence submitted, a November 2, 1999 report by Dr. Roland, a Board-certified otolaryngologist, stated that "[Appellant's hearing loss] has none of the audiometric features of noise-induced hearing loss."

In a December 7, 1999 report, Dr. Roland concluded that "[appellant's] hearing loss is not related to his employment and is not secondary to noise exposure."

No rationalized medical opinion evidence was submitted causally relating appellant's left ear hearing loss to noise exposure during his federal employment. Therefore, the Board finds that appellant has failed to meet his burden of proof in establishing his occupational disease claim.

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<sup>11</sup> *Id.*

The decisions dated April 7, 2000 and December 30, 1999 of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC  
November 14, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member