

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GLORIA D. WARREN and TENNESSEE VALLEY AUTHORITY,  
BROWN FERRY NUCLEAR PLANT, Decatur, AL

*Docket No. 03-478; Submitted on the Record;  
Issued April 28, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether appellant's hearing loss is causally related to her federal employment; and (2) whether the Office of Workers' Compensation Programs, by its June 24, 2002 decision, abused its discretion by refusing to reopen appellant's case for further consideration of the merits of her claim under 5 U.S.C. § 8128(a).

On September 8, 2001 appellant, then a 47-year-old clerk, filed an occupational disease claim alleging that she sustained hearing loss, causally related to noise exposure in her federal employment. Appellant stated that she became aware of the disease on July 15, 1983 and related it to her employment on May 14, 2000. The employing establishment stated that appellant was last exposed to the conditions alleged to have caused the disease on April 29, 1992.

Accompanying the claim were appellant's work history, sources of noise exposure, employing establishment audiograms and the employing establishment's December 11, 2001 letter controverting appellant's claim.

By letter dated January 24, 2002, the Office requested factual information from appellant.

On January 28, 2002 the Office received appellant's response to the January 24, 2002 request. On March 25, 2002 the Office received an August 3, 2001 audiogram.

On May 1, 2002 the Office referred appellant along with a statement of accepted facts to Dr. Sage Copeland, a Board-certified otolaryngologist, for a second opinion evaluation.

On May 23, 2002 the Office received Dr. Copeland's May 21, 2002 report and accompanying audiogram of the same date. Dr. Copeland reviewed appellant's noise exposure history and medical history stating that there was no significant variation between the history given by appellant and that contained in the statement of accepted facts. He reported the findings of her physical examination. Dr. Copeland stated that appellant's hearing loss at the beginning of her federal employment was normal and that the present audiometric findings show

no hearing loss in excess of what would be normally predicated on the basis of presbycusis. He went on to say that the workplace exposure was not sufficient in intensity and duration to have caused the loss in question. Dr. Copeland diagnosed a mild neurosensory loss bilaterally not due to noise exposure in her federal employment based on the degrees of loss, degree of exposure and standard threshold shift not being present. He found the losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hertz were recorded for the right ear as 30, 30, 35 and 30, decibels respectively and for the left ear 30, 35, 40 and 30, decibels respectively.

By decision dated June 3, 2002, the Office denied appellant's claims finding that the evidence of record failed to establish that her hearing loss condition was causally related to noise exposure during her federal employment.

By letter dated June 17, 2002, appellant requested reconsideration of the June 3, 2002 decision. She questioned the date of injury used by the Office, *i.e.*, April 29, 1992.

By decision dated June 24, 2002, the Office denied appellant's request for reconsideration finding that appellant neither raised substantive legal questions nor included new and relevant evidence. Therefore, appellant's request failed to warrant review of the prior decision.

The Board finds that appellant has failed to establish that her hearing loss is causally related to factors of her employment.

An employee seeking benefits under the Federal Employees' Compensation Act 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, that the claim was timely filed within the applicable time limitation period of the Act, 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.<sup>1</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

To establish that an injury was sustained in the performance of duty in on 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 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. 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

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<sup>1</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

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>3</sup>

In this case, the Office sent appellant for a second opinion evaluation with Dr. Copeland, who had a full and accurate history of appellant's work-related noise exposure based on the statement of accepted facts, a copy of appellant's prior audiograms and the results of the May 21, 2000 audiogram. Dr. Copeland opined that although appellant does have evidence of a bilateral high frequency hearing loss, he was unable to attribute the hearing loss to her employment, but rather to the normal aging process. He did not consider appellant's occupational noise exposure to be sufficient in intensity or duration to cause her hearing loss. Thus, in the absence of a rationalized opinion establishing a causal relationship between appellant's diagnosed hearing loss and factors of her employment, the Office properly denied compensation.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a) in its June 24, 2002 decision.

To require the Office to reopen a case for merit review under section 8128 of the Act<sup>4</sup> the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.<sup>6</sup> When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review of the merits.<sup>7</sup>

In support of her June 17, 2002 request for reconsideration, appellant stated that the date shown as the date of injury on the Office's decision was incorrect and that during the time she worked for the employing establishment she was never given a hearing test or aids. As the relevant issue is medical in nature, appellant's statement is irrelevant to that issue and insufficient to warrant reopening her claim on the merits.

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<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. § 8128, "[the] Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application."

<sup>5</sup> 20 C.F.R. §§ 10.606(b).

<sup>6</sup> 20 C.F.R. § 10.608(a).

<sup>7</sup> Joseph W. Baxter, 36 ECAB 228, 231 (1984).

Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, to advance a relevant argument not previously considered by the Office or to submit relevant and pertinent new evidence not previously considered by the Office, the Office properly refused to reopen her claim for a review on the merits in its June 3, 2002 decision.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated June 24 and 3, 2002 are affirmed.

Dated, Washington, DC  
April 28, 2003

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member