

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIXIE ANN JONES and U.S. POSTAL SERVICE,
POST OFFICE, Duluth, GA

*Docket No. 03-1209; Submitted on the Record;
Issued August 28, 2003*

DECISION and ORDER

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

The issue is whether appellant sustained a hearing loss causally related to her federal employment.

On April 16, 2002 appellant, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained a bilateral hearing loss as a result of her federal employment. Appellant indicated that she worked around loud mail processing machinery for 14½ years for 8 hours a day. In support of her claim, appellant submitted an April 15, 2002 audiogram, which was interpreted by the audiologist as showing mild to moderate sensorineural hearing loss in both ears. In a report of the same date, Dr. Todd Schneiderman, for whom audiometric testing was conducted, stated that appellant had a mild hearing loss and would be evaluated for a hearing aid.

The Office of Workers' Compensation Programs referred appellant to Dr. Jeffrey Kunkes, a Board-certified otolaryngologist, for a second opinion. In a November 13, 2002 note, Dr. Kunkes indicated that appellant's testing showed "at best a mild loss not consistent with her standard audiological tests suggesting malingering." In response to questions propounded by the Office, Dr. Kunkes indicated that appellant's workplace exposure was not sufficient to have caused the hearing loss and that the current profound loss was due to an inconsistent response. He also noted:

"The wildly abnormal audio with only mild [otoacoustic emission] changes and patient able to hear and comprehend spoken voice leads to other diagnosis including psychiatric or plain malingering."

By decision dated November 22, 2002, the Office denied appellant's claim as it found that appellant had not met the requirements for establishing that her condition was caused by the employment factor.

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.¹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.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 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 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.³

In the instant case, appellant's physician, Dr. Schneiderman, noted that appellant had a mild hearing loss, but gave no opinion as to whether appellant's employment caused this loss. Accordingly, the Office sent appellant to Dr. Kunkes for a second opinion evaluation. Dr. Kunkes indicated that appellant, at best, had a mild hearing loss and that her audiological tests were consistent with malingering. Additionally, the physician attributed the current profound loss to malingering. He also indicated that appellant's workplace exposure was not sufficient to have caused the 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.

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

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *Id.*

The decision of the Office of Workers' Compensation Programs dated November 22, 2002 is hereby affirmed.

Dated, Washington, DC
August 28, 2003

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member