

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of WILLIAM K. DANIEL, JR. and TENNESSEE VALLEY AUTHORITY,  
SHAWNEE FOSSIL PLANT, West Paducah, KY

*Docket No. 03-810; Submitted on the Record;  
Issued December 15, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a hearing loss in the performance of duty causally related to factors of his federal employment.

On July 31, 2001 appellant, then a 55-year-old unit operator, filed an occupational disease claim alleging that he sustained a hearing loss causally related to noise exposure in his federal employment. Appellant stated that he became aware of the disease and related it to his employment on May 7, 1998. The employing establishment stated that appellant was last exposed to the conditions alleged to have caused the disease on April 2, 2001, which was the date he retired.

Accompanying the claim were an undated form which described appellant's job duties as a unit operator; and an undated statement by appellant identifying the sources of noise exposure to which he attributed his hearing loss.

The Office referred appellant to Dr. Phillip Klapper, a Board-certified otolaryngologist, for examination and determination of the extent of any noise-induced hearing loss. The Office provided an August 23, 2001 statement of accepted facts indicating that, during the period 1970 to April 2001, appellant was exposed to boiler feed pumps, pulverizers, air movers, air compressors, valving and other plant equipment.

In a September 12, 2001 report and accompanying audiogram of the same date, Dr. Klapper reviewed appellant's noise exposure history and medical history. Dr. Klapper reported the findings on physical examination, stating that there was no audiometric data available to enable him to comment on appellant's hearing loss at the beginning of his noise exposure in his federal employment or to allow a comparison of appellant's present audiometric findings with those at the beginning of exposure. He also stated that there was insufficient information to address whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the hearing loss. Dr. Klapper noted that other relevant history facts, *i.e.*, other noise exposure, included right-handed hunting with a shot gun using no ear protection.

Dr. Klapper diagnosed an asymmetric high frequency noise-induced hearing loss secondary to recreational gunfire and concluded that the sensorineural hearing loss was not due to noise exposure in appellant's federal civilian employment.

Dr. Klapper found the losses at the frequencies of 500, 1,000, 2,000 and 3,000 were recorded for the right ear as 0, 0, 0 and 0, decibels respectively and for the left ear 0, 0, 50 and 60, decibels respectively.

On September 20, 2001 the Office received audiograms from the employing establishment covering the period 1972 through 2000.

By decision dated September 25, 2001, the Office denied appellant's claim finding that the evidence of record failed to establish that his hearing loss was causally related to noise exposure during his federal employment.

By letter dated October 21, 2001, appellant requested a review of the written record by an Office hearing representative.

By decision dated August 28, 2002, the hearing representative found that Dr. Klapper's opinion on appellant's asymmetric left ear hearing loss was insufficiently explained. The hearing representative noted that, if appellant fired guns with the right hand as reported, then the noise exposure would be asymmetric on the right side. The hearing representative set aside the September 25, 2001 decision and remanded the case for the Office to seek clarification of Dr. Klapper's opinion on the cause of appellant's hearing loss.

On remand the Office requested clarification from Dr. Klapper. The Office asked him to explain why hearing loss would have been sustained specifically in the left ear if appellant was shooting guns right handed and whether or not appellant's employment-related exposure to noise contributed in any way to his hearing loss.

In an October 7, 2002 report, Dr. Klapper stated:

"Individuals who shoot guns right handed may develop noise-induced hearing loss in the left ear. This is because the right ear is protected from the muzzle blast and the left ear is exposed to the muzzle blast. As a result, individuals can develop an extremely asymmetric high frequency neurosensory hearing loss. This type of hearing loss does not occur in any employment situation I am aware of other than individuals who are employed with a job that requires them to shoot guns such as police or the military. This is an extremely well documented and accepted diagnosis."

Dr. Klapper stated that it was his opinion that appellant's workplace exposure could not have caused his hearing loss, and that appellant's hearing loss was not in any way caused or contributed to by his federal employment-related exposure.

By decision dated October 28, 2002, the Office found that the evidence of record did not support that appellant's hearing loss was causally related to his federal employment.

The Board finds that appellant has failed to establish that he sustained a hearing loss in the performance of duty causally related to factors of his federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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, that the claim was filed within the applicable time limitations 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>2</sup> 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.<sup>3</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 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 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>4</sup>

It is not disputed that appellant has a hearing loss. However, there is insufficient rationalized medical opinion evidence supporting a causal relationship between appellant's employment and his diagnosed hearing loss condition. Dr. Klapper's September 12, 2001 report was obtained diagnosed asymmetric high frequency noise-induced hearing loss (left ear) secondary to right hand shooting recreational gun fire, and opined that the hearing loss was not due to noise exposure encountered in appellant's federal employment.

On October 7, 2002 Dr. Klapper explained that individuals who shoot guns with their right hand may develop noise-induced hearing loss in the left ear and not the right ear because the right ear is protected from the muzzle blast and the left ear is exposed to the muzzle blast.

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<sup>1</sup> 5 U.S.C. § 8101.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

Dr. Klapper noted that individuals can develop an extremely asymmetric high frequency neurosensory hearing loss. He opined that this type of hearing loss does not occur in any employment situation that he was aware of other than individuals who shoot guns as required by their jobs such as police or the military. Dr. Klapper also stated that this is an extremely well documented and accepted diagnosis.

Dr. Klapper's reports constitute the weight of the medical evidence in this case. He conducted an otologic evaluation and reviewed a September 12, 2001 audiogram performed for him. Dr. Klapper noted appellant's history of recreational gunfire and found that the asymmetric high frequency hearing loss was consistent with exposure to gunfire. He stated that the asymmetrical hearing loss present in appellant did not result due to exposure to noise in appellant's federal employment. Dr. Klapper concluded that appellant's hearing loss was not due to noise exposure in his federal civilian employment, but to exposure to gunfire.

The decisions dated October 28 and August 28, 2002 of the Office of Workers' Compensation Programs are affirmed.<sup>5</sup>

Dated, Washington, DC  
December 15, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>5</sup> The Board notes that pages 19-26 of the record do not belong to appellant in this case.