

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RAYMOND B. KINNAMON and DEPARTMENT OF THE ARMY,  
NATIONAL GUARD, Jefferson City, MO

*Docket No. 03-1881; Submitted on the Record;  
Issued December 24, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant's hearing loss is causally related to his federal employment.

On January 3, 2003 appellant, then a 58-year-old electronic mechanic, filed an occupational disease claim alleging that he sustained hearing loss causally related to noise exposure in his federal employment. He stated that he first became aware of his condition and realized that it was caused or aggravated by his employment on August 5, 1996. Appellant did not stop work. Accompanying the claim were appellant's work history, sources of noise exposure and employing establishment audiograms.

By letters dated March 25, 2003, the Office of Workers' Compensation Programs requested factual information from appellant and the employing establishment.

On April 23, 2003 appellant responded to the Office stating that he would retire on May 2, 2003. He also submitted a copy of his work history, including noise exposure.

The employing establishment submitted *inter alia* copies of noise exposure testing, sources of noise exposure, responses to specific questions, copies of audiological testing dating from November 21, 1984 to June 28, 2000 and a hearing evaluation prepared by an audiologist on May 22, 1998.

On May 9, 2003 the Office referred appellant along with a statement of accepted facts to Dr. Michael Simmons, a Board-certified otolaryngologist, for a second opinion evaluation.

On June 10, 2003 appellant underwent audiometric testing.<sup>1</sup> In an accompanying report, Dr. Simmons reviewed appellant's 27-year history of noise exposure and advised that there was no significant variation between the history given by appellant and that contained in the statement of accepted facts. He reported findings on physical examination and diagnosed sensorineural hearing loss. Dr. Simmons advised that appellant's hearing at the beginning of his federal employment was normal and that the present audiometric findings showed no hearing loss in excess of what would be normally predicated on the basis of presbycusis.<sup>2</sup> He responded "yes" with respect to whether the workplace exposure was sufficient in intensity and duration to have caused the loss in question, but added that the loss was sensorineural associated with tinnitus. Dr. Simmons checked a box "no" that no part of appellant's hearing loss was employment related, concluding that "probably 50 percent of men his age would have average thresholds of similar values."

In a memorandum dated June 20, 2003, an Office medical adviser, relying on Dr. Simmons' report, advised that appellant's hearing loss was determined to be unrelated to his federal employment.

By decision dated June 23, 2003, the Office denied appellant's claim finding that the evidence of record failed to establish that his hearing loss condition was causally related to noise exposure during his federal employment.

The Board finds that this case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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 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 is causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>4</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 diagnosed condition is causally related to the employment factors identified by the claimant.

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<sup>1</sup> The testing revealed losses at the frequencies of 500, 1,000, 2,000 and 3,000 Hertz were recorded for the right ear as 15, 20, 40 and 50, decibels respectively and for the left ear 10, 15, 35 and 35, decibels respectively.

<sup>2</sup> Presbycusis is defined as "A progressive, bilaterally, symmetric perceptive hearing loss occurring with age." *DORLAND'S Illustrated Medical Dictionary*, 29<sup>th</sup> ed.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

The medical opinion 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>5</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>6</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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>7</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>8</sup>

In this case, the second opinion referral physician, Dr. Simmons, diagnosed noise-induced sensorineural hearing loss. He completed a Form CA-1332 (outline for otologic evaluation) and checked a box that the hearing loss was "not due" to noise exposure in federal employment. The Office medical adviser, in a report dated June 20, 2003, noted that Dr. Simmons indicated that appellant's hearing loss was not due to federal employment and did not discuss any further aspects of Dr. Simmons' report.

The Board notes, however, that on the Form CA-1332, question 1(d), Dr. Simmons was asked, "[w]as the workplace exposure, as described in the material provided, sufficient as to intensity and duration to have caused the loss in question?" Dr. Simmons responded "yes." The Office did not request clarification of the contradictory responses provided by Dr. Simmons on the issue of causal relationship with employment in relation to the diagnosis, which was sensorineural hearing loss. Further, Dr. Simmons did not discuss sources of noise exposure or otherwise explain why he checked that the hearing loss was "not due" to federal employment noise exposure, when he indicated "yes" to the question inquiring whether appellant's workplace exposure was sufficient as to intensity and duration to have caused the loss in question. As the Office sought the opinion of Dr. Simmons, it has the responsibility to obtain a report which resolves the issues presented in the case.<sup>9</sup> He has offered contradictory answers with regard to whether the hearing loss was due to appellant's federal employment and did not satisfactorily resolve the issue.

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>7</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>8</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>9</sup> *See Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

The case will be remanded to the Office for a supplementary report from Dr. Simmons on the issue of causal relationship with respect to appellant's employment. After such further development as the Office deems necessary, it should issue an appropriate decision.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 23, 2003 is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, DC  
December 24, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member