

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**JAMES D. COOK, Appellant**

**and**

**DEPARTMENT OF THE NAVY, NAS  
WHITING FIELD, Milton, FL, Employer**

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**Docket No. 03-1422  
Issued: March 31, 2004**

*Appearances:*  
*James D. Cook, pro se*  
*Office of the Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN COLLEEN DUFFY KIKO, Member  
DAVID S. GERSON, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On May 12, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated May 1, 2003, in which the Office denied his claim for a hearing loss. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the decision.

**ISSUE**

The issue is whether appellant established that he sustained a work-related hearing loss causally related to his federal employment.

**FACTUAL HISTORY**

On October 7, 2003 appellant, then a 51-year-old deputy public works officer, filed an occupational claim alleging that he sustained a hearing loss at work. He stated that from March 20, 1975 until September 31, 1982 he was exposed to noisy equipment on a daily basis. Appellant stated that there were no known hearing problems in his family. He indicated that he first reported his condition to his supervisor on June 3, 2002 and eventually was transferred to maintenance control for reasons unrelated to his health. The statement of accepted facts dated

April 4, 2003 stated that appellant was exposed to loud noise six to seven hours a day, five days a week, from March 1975 to September 1983. Further, ear muffs were provided for the shop area in 1981. Appellant had hobbies of firing rifles, pistols and shotguns which involved noise exposure. He used ear muffs when firing on ranges. Appellant also enjoyed fishing and was exposed to the loud noise of the outboard motors. He had no previous ear injury or infection and had never been treated for hearing problems.

The Office referred appellant to Dr. John S. Keebler, a Board-certified otolaryngologist, to assess the nature of his hearing loss. An audiogram performed on April 22, 2003 showed that frequencies in appellant's right ear at 500, 1,000, 2,000 and 3,000 cycles were 45, 50, 30, 40 and the frequencies in appellant's left ear at those same frequencies were 50, 40, 30 and 45. On an Office form he submitted on April 24, 2003, Dr. Keebler found that appellant's canals and drums, drum mobility and results of basic fork tests were normal. He stated that appellant had mostly a conductive loss and had more than presbycusis. In response to the question whether the workplace exposure was sufficient as to intensity and duration to have caused the loss in question, Dr. Keebler answered "No [--] has otosclerosis." He diagnosed otosclerosis bilaterally and probably cochlear and stapedial. Dr. Keebler checked the box that appellant's sensorineural hearing loss was not due to his noise exposure at work and stated "conductive losses significant."

By decision dated May 1, 2003, the Office denied appellant's hearing claim, stating that the weight of the medical evidence of record established that appellant's hearing loss was not due to noise exposure in his federal employment.

### **LEGAL PRECEDENT**

Before a hearing loss can be evaluated pursuant to the (5<sup>th</sup> ed. 2001) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* for an impairment rating, it must first be established that the hearing loss is work related.<sup>1</sup> To establish that an injury, in this case, a hearing loss, was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 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 a 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>2</sup>

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<sup>1</sup> See *Ausbon N. Johnson*, 50 ECAB 304, 309-10 (1999); *William A. Duncan*, 29 ECAB 881, 883 (1978).

<sup>2</sup> See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relation.<sup>3</sup>

### ANALYSIS

In this case, the second opinion physician, Dr. Keebler, noted that appellant's canals and drums, drum mobility and the results of the basic fork tests were normal. He reviewed the results of the April 22, 2003 audiogram and opined that appellant had mostly a conductive loss and had more than presbycusis. Dr. Keebler diagnosed otosclerosis, probably cochlear and stapelial. He opined that appellant's workplace exposure was insufficient as to intensity and duration to have caused the loss in question. Dr. Keebler indicated that appellant's sensorineural hearing loss was not due to the noise exposure at his federal employment. His opinion is complete and well rationalized and establishes that appellant's hearing loss is not work related. Appellant is; therefore, not entitled to a schedule award for his hearing loss.

### CONCLUSION

The Board finds that the medical evidence of record established that appellant's hearing loss was not work related.

### ORDER

**IT IS HEREBY ORDERED THAT** the May 1, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: March 31, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>3</sup> *Lucrecia M. Nielsen*, 42 ECAB 583, 593 (1991); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).