



joint disease were employment related. She noted that a hostile work environment and work-related accident on September 27, 2000 caused her to realize the deterioration of her hearing loss and her health. In support of her claim appellant submitted statements from supervisor, maintenance vehicle records and other personnel documents. She also submitted a note from Dr. Robert G. Brousse, a treating Board-certified otolaryngologist, with a facsimile date of November 24, 1995, who diagnosed tinnitus and moderate sensorineural hearing loss based on an October 11, 1995 audiogram.

In a letter dated July 18, 2002, the Office acknowledged receipt of appellant's July 2000 traumatic injury claim and her May 27, 2002 occupational disease claim. The Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office requested that she submit additional factual and medical evidence supportive of her claim.

By decision dated September 26, 2002, the Office denied appellant's claim on the grounds that she failed to submit any medical evidence showing a causal relationship between her hearing condition and "the alleged employment factors."

In a letter dated September 26, 2003, appellant requested reconsideration and submitted medical evidence, including a September 23, 2002 magnetic resonance imaging scan, audiology reports dated October 11, 1995 and September 29, 2000, treatment notes for the period October 11 to November 17, 1995, May 1, 1996 dental records, consultation reports dated May 18, 1999, August 18, September 29, October 18 and December 6, 2000, April 17, 2001, May 23, 2002 and March 28, 2003 and an April 21, 2003 report by Dr. Stanley E. Peters, Jr., a treating Board-certified otolaryngologist, and a statement describing her noise exposure. Dr. Peters stated that appellant sought treatment with him for her hearing loss and tinnitus, which appellant attributed to driving a vehicle with a defective muffler over a period of time. A review of an audiogram revealed "bilateral high frequency hearing loss at the 6,000 cycle level." He treated her on September 29, 2002 for high frequency hearing loss at the 6,000 and 8,000 cycles per second (cps). He opined "it was certainly a strong possibility that continued noise exposure could have resulted in a worsening of the hearing loss."

The Office referred appellant to Dr. Edgar R. Franklin, a Board-certified otolaryngologist, to assess whether her hearing loss and tinnitus were work related. An audiogram performed on February 19, 2004 showed that frequencies in appellant's right ear at 500, 1,000, 2,000 and 3,000 cps were 15, 10, 5, 10 decibels and the frequencies in appellant's left ear at those same frequencies were 15, 10, 5 and 15 decibels. On an Office form he submitted on February 26, 2004, Dr. Franklin found that appellant's canals and drums and drum mobility were normal. The results of basic fork tests were midline. He diagnosed tinnitus and mild bilateral high tone sensorineural hearing loss. Dr. Franklin checked the box that appellant's sensorineural hearing loss was not due to her noise exposure at work and stated "tinnitus with slight hearing loss since at least [October] 11[,] [19]95" and zero percent disability due to her hearing. In a February 19, 2004 report, Dr. Franklin concluded that appellant had a zero percent hearing loss based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. He further stated:

"Since I do not have information about the amount and duration of the noise to which she was exposed for three months, I cannot state whether this was enough

to cause any hearing loss. She does not have disability of hearing loss. She does have tinnitus which is annoying, but does not have enough hearing loss to consider fitting her with hearing aids.

By decision dated March 11, 2004, the Office denied appellant's request for modification. The Office found, based upon Dr. Franklin's report, that the medical evidence was insufficient to establish that her hearing condition was causally related to her employment.

### **LEGAL PRECEDENT**

Before a hearing loss can be evaluated pursuant to the A.M.A., *Guides* (5<sup>th</sup> ed. 2001) for an impairment rating, it must first be established that the hearing loss is work related.<sup>1</sup> To establish that a condition 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 the employment factors alleged to have caused or contributed to the etiology 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.<sup>2</sup> Causal relationship is generally established by rationalized medical evidence explaining how and why factors of the claimant's federal employment caused or contributed to the claimed condition. Such evidence must be based on a complete and accurate factual and medical history, and be of reasonable medical certainty.<sup>3</sup>

### **ANALYSIS**

In this instant case, the medical evidence relevant to whether appellant's hearing loss was employment related are reports by Drs. Franklin, a second opinion Board-certified otolaryngologist, and Dr. Peters, a treating Board-certified otolaryngologist. Dr. Peters opined that "it was certainly a strong possibility that continued noise exposure could have resulted in a worsening of the hearing loss." The opinion by Dr. Peters is of limited probative value as the opinion is both speculative and equivocal in nature as to the causal relationship between the diagnosed condition and factors of appellant's employment.

Similarly, the reports by Dr. Franklin are also insufficient to support appellant's burden of proof in establishing that her hearing loss is employment related. In a February 26, 2004 form report, Dr. Franklin checked the box that appellant's sensorineural hearing loss was not employment related. In a February 19, 2004 written report, Dr. Franklin indicated that he could not state whether appellant's hearing loss was employment related as he did "not have information about the amount and duration of the noise to which she was exposed."

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

<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>3</sup> *Ricky S. Storms*, 52 ECAB 349 (2001); *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

Appellant has not provided any evidence indicating that noise exposure during the course of her federal employment caused any of 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.

**CONCLUSION**

The Board finds that appellant failed to establish that her hearing loss was causally related to her employment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 11, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 5, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member