

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

ERICK H. DELUMEAU, Appellant)	
)	
and)	Docket No. 04-1442
)	Issued: October 7, 2004
DEPARTMENT OF HOMELAND SECURITY, TRANSPORT SECURITY ADMINISTRATION, Mays Landing, NJ, Employer)	
)	
)	

Appearances:
Erick H. DeLumeau, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On May 10, 2004 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated March 10, 2004, finding that he had not established that his hearing loss, scarred and infected ear drum were causally related to an October 4, 2003 employment incident. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that his scarred and infected ear drum and hearing loss were causally related to an October 4, 2003 employment incident.

FACTUAL HISTORY

On October 10, 2003 appellant, a 25-year-old civil aviation security specialist, filed a traumatic injury claim alleging that on October 4, 2003 he sustained a scarred and infected ear

drum which resulted in a hearing loss in the left ear due to pressure from descending in an airplane.

In an October 11, 2003 an attending physician's report (Form CA-20),¹ the physician² diagnosed otitis media, which he checked "no" in response to the question whether the condition was employment related.

In a letter dated February 9, 2004, the Office advised appellant that the information submitted was insufficient to establish his claim. It requested further factual information about the implicated employment incident to establish that he was injured while in the performance of duty. The Office also requested a rationalized medical report discussing the causal relationship between the employment incident and his medical conditions. Furthermore, the Office advised appellant that the October 11, 2003 physician's report was insufficient to support his claim as the physician specifically noted the condition was unrelated to the employment incident. He was given 30 days to submit the requested information. No evidence was received.

By decision dated March 10, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that his condition was causally related to the alleged October 4, 2003 employment incident.³

LEGAL PRECEDENT

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.⁵ Rationalized medical opinion evidence includes a physician's rationalized opinion on the issue of whether there is a causal relationship

¹ This report accompanied an authorization for treatment (Form CA-16), to Dr. Francis Lamar Foley, Jr., a Board-certified family practitioner, by the employing establishment.

² The signature of the physician is indecipherable.

³ Subsequent to the issuance of the Office decision, appellant submitted additional evidence. As this evidence was not previously submitted to the Office for consideration prior to its decision of March 10, 2004, it represents new evidence which cannot be considered by the Board in the current appeal. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

⁴ *Ellen L. Noble*, 55 ECAB ____ (Docket No. 03-1157, issued May 7, 2004); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Beverly A. Spencer*, 55 ECAB ____ (Docket No. 03-2033, issued May 3, 2004).

between the claimant's diagnosed condition and the implicated employment factors.⁶ 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.⁷ The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Office accepted that appellant was in the performance of duty on October 4, 2003 when he was descending in an airplane and alleged that he sustained a scarred and infected ear drum and resultant hearing loss in the left ear.

In support of his claim, appellant submitted an attending physician's report with an indecipherable physician's signature. The physician diagnosed an ear infection which he concluded was not employment related. Since this report concluded that appellant's ear infection was not employment related, this report is insufficient to show that his condition is employment related. The record contains no other medical evidence which diagnoses an ear condition or loss of hearing or attributes such a condition to the employment incident identified by appellant. Appellant has failed to meet his burden of proof to establish a medical condition causally related to his employment.

CONCLUSION

The Board finds that, as appellant failed to submit the necessary medical opinion evidence to establish a causal relationship between his accepted employment incident and his ear infection and loss of hearing, the Office properly denied his claim.

⁶ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004).

⁷ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004).

⁸ *James Mack*, 43 ECAB 321 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 10, 2003 is affirmed.

Issued: October 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member