



By letter dated May 9, 2005, the Office asked appellant to submit additional evidence, including a complete job history (federal and nonfederal), a description of the source of his noise exposure at the employing establishment and medical evidence. The employing establishment submitted an April 28, 2005 memorandum describing appellant's noise exposure during a portion of his tenure. No additional factual evidence was submitted to the Office and no medical evidence was submitted.

By decision dated June 27, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a bilateral hearing loss in the performance of duty causally related to factors of his employment.

Appellant requested reconsideration. He indicated that additional evidence had been submitted by the employing establishment on his behalf.

By decision dated August 11, 2005, the Office denied appellant's request for reconsideration on the grounds that the evidence did warrant further merit review of his claim.<sup>1</sup>

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden to establish the essential elements of his 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 or 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>3</sup>

To establish a causal relationship between appellant's bilateral hearing loss and his employment, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's 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>

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<sup>1</sup> Appellant submitted additional evidence with his appeal to the Board. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. See 20 C.F.R. § 501.2(c). The Board has no jurisdiction to consider this evidence for the first time on appeal.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Donald W. Wenzel*, 56 ECAB \_\_ (Docket No. 05-146, issued March 17, 2005).

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

### **ANALYSIS -- ISSUE 1**

Appellant failed to submit sufficient evidence to establish that he sustained a bilateral hearing loss causally related to factors of his federal employment. He did not submit a complete description of the sources of exposure to hazardous noise responsible for his hearing loss or medical evidence establishing that his hearing loss was causally related to his employment. In its May 9, 2005 letter, the Office advised appellant of the evidence needed to establish his hearing loss claim but such evidence was not forthcoming. Appellant has not provided the required factual and medical evidence necessary to establish a *prima facie* claim for compensation benefits under the Act.<sup>5</sup> Appellant failed to meet his burden of proof to establish an employment-related hearing loss.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation.<sup>6</sup> The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

- (1) end, decrease, or increase the compensation awarded; or
- (2) award compensation previously refused or discontinued.”

The Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.<sup>7</sup> When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.<sup>8</sup>

### **ANALYSIS -- ISSUE 2**

In support of his request for reconsideration, appellant did not submit any additional evidence or argument. He stated that the employing establishment had submitted additional evidence on his behalf. However, no such evidence is of record. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal

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<sup>5</sup> See *Richard A. Weiss*, 47 ECAB 182 (1995).

<sup>6</sup> 5 U.S.C. § 8128(a).

<sup>7</sup> 20 C.F.R. § 10.606(b)(2).

<sup>8</sup> 20 C.F.R. § 10.608(b).

argument or submit relevant and pertinent evidence not previously considered by the Office. It properly denied his request for further merit review of his claim.

**CONCLUSION**

The Board finds that appellant failed to establish that he sustained a hearing loss in the performance of duty causally related to factors of his employment. The Board further finds that the Office properly denied his request for reconsideration.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated August 11 and June 27, 2005 are affirmed.

Issued: December 9, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board