

records accompanied the claim. Appellant indicated that he had worked for the employing establishment from 1976 to 1999.

By letter dated January 7, 2004, Cheryl Rasbury, a nurse practitioner from the employing establishment, noted that appellant's last audiogram was conducted on July 8, 1997 and showed that there was no low frequency loss and that his hearing was normal. The employing establishment submitted copies of appellant's audiometric records from testing performed at the employing establishment.

In a report dated March 30, 2004, an Office medical adviser determined that the earliest employment audiogram of March 27, 2005 showed normal hearing with mild elevation of the threshold at 6,000 Hertz on the right. He advised that studies through July 8, 1997 showed virtually no change. The Office medical adviser indicated that appellant's hearing was normal with the exception of a very mild variation on the right.

By letter dated April 1, 2004, the Office requested additional factual information from appellant.

By letter dated April 23, 2004, R.E. Jackson, the chief of public safety at the employing establishment for the period January 1970 to until December 1999, indicated that employees during that time frame were required to qualify annually and practice continually with various weapons which included shotguns, 38s and pistols and handguns and M-16 rifles and 30 caliber carbines. He also indicated that officers were posted throughout the employing establishment in high noise areas. Mr. Jackson noted that hearing protection was not provided or required until the late 1980's. He specifically noted that appellant complained about his hearing and ringing in his ears.

In an April 26, 2004 statement, appellant indicated that he was not given any physical examinations during his last two years of employment for the employing establishment. He also indicated that he was not aware that he could file a claim earlier.

By decision dated May 12, 2004, the Office denied appellant's claim, finding that it was not timely filed.

By letter dated June 4, 2004, appellant requested a hearing.

By decision dated October 18, 2004, an Office hearing representative found that appellant's claim was timely filed as the employing establishment had actual knowledge of a reported injury based on Mr. Jackson's statement. The hearing representative determined that the opinion of the Office medical adviser was not definitive as there was no reasoned medical opinion from a physician who had examined or treated appellant. The Office hearing representative set aside the May 12, 2004 decision and recommended that the Office refer appellant for a second opinion examination.

By letter dated December 15, 2004, the Office referred appellant, together with the medical record and a statement of accepted facts,² to Dr. Sage Copeland, a Board-certified otolaryngologist, for a second opinion evaluation to include an audiogram. Dr. Copeland submitted a report dated December 27, 2004 describing his examination. He diagnosed mild neurosensory loss in the left ear and moderate mixed loss in the right ear. Dr. Copeland opined that the sensorineural hearing loss was not due to employment-related noise exposure and advised that there were no other contributing factors. Dr. Copeland explained that this was due to the degree of loss and degree of exposure and explained that the standard threshold shift was not present. In response to whether there was any medical condition such as acoustic neuroma or Meniere's disease, he responded that appellant had conductive hearing loss on the right but no cochlear or retrocochlear pathology. He indicated that appellant could utilize ear protection and see his local physician regarding conductive loss. Dr. Copeland also submitted results of audiometric testing performed by a certified audiologist.

By decision dated January 7, 2005, the Office denied appellant's claim for compensation as the medical evidence failed to demonstrate the claimed condition was causally related to the established work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

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 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 the claimant. The medical

² The statement of accepted facts included that appellant worked for the employing establishment from 1975 to 1999 with intermittent noise exposure to general nuclear plant noise on a daily basis and exposure to firing ranges several times a year when qualifying for weapons training. The Office noted that noise exposure ranged from 84 to 100 decibels and hearing protection was provided.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

evidence required to establish causal relationship, generally, is rationalized medical opinion 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 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.⁶

ANALYSIS

The Office accepted that appellant was exposed to occupational noise levels from 84 to 100 decibels.⁷ The issue on appeal is whether this exposure caused the hearing loss in both of appellant's ears. Dr. Copeland, a Board-certified otolaryngologist and second opinion physician, diagnosed mild neurosensory loss in the left ear and moderate mixed loss in the right ear. He opined that the sensorineural hearing loss was not due to employment-related noise exposure. However, he did not provide a rationalized opinion to explain how he made this determination. The record reflects that appellant was exposed to intermittent noise exposure on a daily basis, from the nuclear generator plant as well as noise from the firing range several times a year from 1975 to 1977. Dr. Copeland merely stated that there were "no other contributing factors." Dr. Copeland indicated that appellant's condition was not employment related due to the degree of loss, degree of exposure and that the standard threshold shift was not present. He did not fully explain why the degree of loss or degree of exposure was not significant. Further, Dr. Copeland did not explain how he determined how the standard threshold shift was not present. Additionally, in response to whether there was any medical condition such as acoustic neuroma or Meniere's disease, he responded that appellant had conductive hearing loss on the right but no cochlear or retrocochlear pathology. He did not indicate or explain why conductive hearing loss would or would not be related to exposure to noise. In *Bobbie F. Cowart*, the Board found that the employee did not meet her burden of proof to establish that her accepted exposure to noise levels above 85 decibels at work caused a hearing loss in the left ear. The evaluating physician provided a rationalized opinion and explained that conductive hearing loss was strongly suggestive of osteosclerosis in the left ear, which was a type of hearing loss not related to exposure to loud noise.⁸ In this case, the Board finds that the opinion of Dr. Copeland is not sufficiently rationalized as he did not fully explain the nature of the hearing loss and the basis for his conclusion that it was not related to appellant's occupational noise exposure.

⁶ *Id.*

⁷ Although appellant did not file his claim until July 15, 2003, the Office hearing representative found that appellant's claim was timely filed as the employing establishment had actual knowledge of the reported injury. The Board also notes that even if a claim is not timely filed within the three-year period of limitation, it would still be regarded as timely under section 8122(a)(1) if the immediate superior had actual knowledge of his alleged employment-related injury within 30 days or written notice of the injury was provided within 30 days pursuant to section 8119. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death. See *James A. Sheppard*, 55 ECAB ____ (Docket No. 03-692, issued May 5, 2004); *David R. Morey*, 55 ECAB ____ (Docket No. 04-967, issued August 16, 2004).

⁸ See *Bobbie F. Cowart*, 55 ECAB ____ (Docket No. 04-1416, issued September 30, 2004).

Proceedings under the Act are not adversarial in nature nor is the Office a disinterested arbiter.⁹ While the claimant has the responsibility to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.¹⁰ Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.¹¹ Consequently, the case will be remanded for the Office to obtain a reasoned medical opinion regarding whether appellant's hearing loss is employment related. Following this and such other development as deemed necessary, the Office shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2005 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 7, 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

⁹ *Vanessa Young*, 55 ECAB ____ (Docket No. 04-562, issued June 22, 2004).

¹⁰ *Richard E. Simpson*, 55 ECAB ____ (Docket No. 04-14, issued May 3, 2004).

¹¹ *Melvin James*, 55 ECAB ____ (Docket No. 03-2140, issued March 25, 2004).