

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

ROGER D. ZIEGLER, Appellant)
and) Docket No. 06-356
DEPARTMENT OF THE ARMY, ARMY) Issued: March 9, 2006
NATIONAL GUARD, Fort McCoy, WI,)
Employer)

)

Appearances:
Roger D. Ziegler, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On December 5, 2005 appellant filed a timely appeal of the September 16, 2005 merit decision of the Office of Workers' Compensation Programs, which denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty.

FACTUAL HISTORY

On October 22, 2004 appellant, then a 54-year-old heavy mobile equipment repair inspector, filed an occupational disease claim for hearing loss. Appellant attributed his bilateral hearing loss to occupational noise exposure dating back to June 1974. He first became aware of

his hearing loss on September 26, 1991 and he continued to be exposed to hazardous noise through December 2004.¹

On March 18, 2005 the Office advised appellant of the need for a medical report that included a specific diagnosis and a discussion of whether the diagnosed condition was causally related to his work activities. The Office afforded appellant 30 days to submit the requested information. In response, appellant informed the Office that he had not been treated for his hearing condition, but he had recently undergone an exit physical in conjunction with his retirement. However, he did not have a copy of the December 2004 examination results.

Dr. Christopher J. Keller, a Board-certified otolaryngologist and Office referral physician, examined appellant on June 6, 2005 and found that his noise-induced sensorineural hearing loss predated his federal civilian employment. While appellant's hearing loss worsened during his tenure with the employing establishment, Dr. Keller found that the progression was not due to occupational noise exposure but was consistent with presbycusis.

In a decision dated September 16, 2005, the Office denied appellant's claim because he failed to establish a causal relationship between his diagnosed hearing loss and his employment exposure.

LEGAL PRECEDENT

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty, a claimant must submit: (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 diagnosed condition is causally related to the employment factors identified by the claimant.⁴

¹ Appellant retired effective January 1, 2005.

² 5 U.S.C. § 8101 *et seq.*

³ 20 C.F.R. § 10.115(e), (f) (1999); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996). Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factors. *Id.*

⁴ *Victor J. Woodhams*, *supra* note 3.

ANALYSIS

The medical evidence of record does not establish that appellant's hearing loss is causally related to his federal employment. Dr. Keller is the only physician of record to offer an opinion on causal relationship and he found that appellant had a preexisting hearing loss. According to Dr. Keller, appellant's preexisting hearing loss was evident from a September 27, 1973 audiogram. Appellant was in his early twenties at the time. He did not begin working for the employing establishment until approximately eight months later on June 9, 1974. Dr. Keller noted that appellant's hearing loss progressed during his 30-year tenure with the employing establishment. However, the high frequency progression was in line with presbycusis and the noted absence of low frequency progression was also consistent with the aging process. Appellant was also noted to have utilized hearing protection while he worked. Based on the totality of the information presented, Dr. Keller concluded that appellant's hearing loss was not caused or contributed to by his federal civilian employment noise exposure. He explained that the degree of hearing loss appellant experienced between the ages of 25 and 55 would be completely expected even if he had worked in a quiet office environment or had not worked at all. The medical evidence of record does not establish a causal relationship between appellant's employment and his diagnosed condition. Accordingly, the Office properly denied appellant's occupational disease claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 16, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 9, 2006
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