

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

R.K., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Lebanon, PA, Employer**

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**Docket No. 06-1132
Issued: September 6, 2006**

Appearances:
R.K., 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 April 10, 2006 appellant filed a timely appeal of a January 13, 2006 merit decision of the Office of Workers' Compensation Programs. 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 a ratable hearing loss or tinnitus as causally related to noise exposure in July 2004.

FACTUAL HISTORY

On July 19, 2004 appellant, then a 39 year-old social worker, filed a traumatic injury claim (Form CA-1), alleging that he sustained ringing in his ears and hearing loss when he was exposed to a loud "fly" fan for several hours. He reported the date of injury as July 16, 2004. In a narrative statement, appellant reported that he was exposed to an extremely loud fan on July 16, 2004 located just outside his office door. He submitted a treatment note dated August 6,

2004 from Dr. Howard Melnick, an ear, nose and throat specialist, noting that appellant was exposed to a loud fan on July 16, 2004 and complained of ringing in his ears and a headache. Dr. Melnick diagnosed tinnitus with possible sensorineural hearing loss secondary to noise exposure. The record includes an August 6, 2004 audiogram, which does not provide results at 3,000 hertz (Hz).

In a report dated August 19, 2004, Dr. Robert Barton, a family practitioner, provided a history of exposure to industrial noise for several days from a loud fan. He provided results on examination and diagnosed right tinnitus. Dr. Barton stated that tinnitus is from high frequency hearing loss and usually becomes less of a concern over time.

In a December 6, 2004 form report (CA-20), Dr. James Restrepo, an otolaryngologist, diagnosed tinnitus. He provided a history that appellant had ringing in his ears since July 16, 2004 after exposure to industrial noise. Dr. Restrepo checked a box "yes" that the condition was causally related to employment, stating "only by history given by patient."

By decision dated December 16, 2004, the Office denied the claim for compensation. It found that appellant had not established an incident or submitted sufficient medical evidence to establish the claim.

Appellant requested a review of the written record and submitted additional evidence. In a CA-20 dated December 9, 2004, Dr. Melnick diagnosed "tinnitus/sensorineural hearing loss/Eustachian tube dysfunction." He checked a box "yes" that the condition was employment-related, stating "in the right it is possible, as loud noise exposure may cause hearing loss." In a CA-20 form dated January 3, 2005, Dr. Barton diagnosed tinnitus and eustachianitis, checking a box "yes" on causal relationship with employment.

In a decision dated May 4, 2005, an Office hearing representative remanded the case for further development. He directed the Office to secure additional factual information regarding the noise exposure and refer the case for a second opinion evaluation.

The Office further developed the factual evidence and received a sound level survey of the fan from the employing establishment dated June 29, 2005. The survey reported decibels levels near the fan, in the hallway and in appellant's office. According to the employing establishment, the fan was installed on July 12, 2004 and disconnected on July 19, 2004.

Appellant, together with the evidence of record and a statement of accepted facts, was referred to Dr. Clifford Steinig, an osteopath specializing in otolaryngology, for evaluation. By report dated July 21, 2005, he provided a history and results on examination. Dr. Steinig noted that a July 21, 2005 audiogram showed hearing essentially within normal limits, with a mild drop at 6,000 and 8,000 Hz. Dr. Steinig diagnosed mild binaural high frequency neurosensory hearing loss. He stated:

"Clearly, patients with this type of loss can complain of tinnitus. On reviewing the chart in some detail, I really question whether the exposure to the fan noise could have caused the tinnitus. Clearly, the decibel level of the fan itself is really not enough to cause a problem.

“As far as his nerve loss at 6,000 and 8,000 cycles per second bilaterally is concerned, there is no way that we can definitely state that the loss was due to exposure to loud noise. Without the benefit of an audiometric study done prior to July 2004, we cannot accurately determine if there was a change due to the noise exposure.

“It is, therefore, my considered medical opinion that [appellant] may indeed have a right-sided tinnitus, but I cannot state with any degree of medical certainty that this was indeed due to the noise exposure.”

By decision dated August 9, 2005, the Office denied the claim for compensation on the grounds that the medical evidence did not establish an employment-related condition. Appellant requested a review of the written record on August 28, 2005. By decision dated January 13, 2006, the hearing representative affirmed the August 9, 2005 decision.

LEGAL PRECEDENT

Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.¹ 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.² 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.³

When the Office refers a claimant for a second opinion evaluation, it has the responsibility to obtain a report which resolves the issues presented in the case.⁴

ANALYSIS

The Office based its determination on the medical report from the second opinion physician, Dr. Steinig. The Office provided him with a factual background that included the decibel levels of the noise exposure in this case. Dr. Steinig reported that appellant did have very high frequency hearing loss and that patients with this type of loss can complain of tinnitus. Regardless of whether the hearing loss would be ratable and entitle appellant to a schedule award, the initial issue is whether there was an injury causally related to the noise exposure.⁵

¹ See *Robert G. Morris*, 48 ECAB 238 (1996).

² *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

³ *Id.*

⁴ See *Mae Z. Hackett*, 34 ECAB 1421 (1983); *Richard W. Kinder*, 32 ECAB 863 (1981).

⁵ See *Juan A. Trevino*, 54 ECAB 358 (2003), (a claimant may be entitled to medical benefits for an employment-related hearing loss even if the hearing loss is not ratable).

Dr. Steinig did not provide an affirmative medical opinion on the issues presented. Although he stated, with respect to tinnitus, that the decibel level was not really enough to cause a problem, he opined that there was no way to definitely state whether appellant's hearing loss was due to the employment and without an audiometric study prior to July 2004, the issue could not be accurately determined. Dr. Steinig did not provide an opinion on whether he believed there was any contribution from the employment noise exposure with respect to the hearing loss. A physician's opinion does not have to be one of absolute certainty, but he must provide a reasoned opinion based on the available evidence.⁶ The Office should have requested a supplemental report from Dr. Steinig that provides a clear opinion on whether he believed the high frequency hearing loss or tinnitus was related to noise exposure at work in July 2004, based on the evidence that is available. If he cannot render an opinion based on the evidence, then the Office should refer appellant to another second opinion physician. After such development as the Office deems necessary, it should issue an appropriate decision.

CONCLUSION

The case will be remanded to the Office to secure a medical opinion that adequately addresses the causal relationship issues presented.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 13, 2006 and August 9, 2005 are set aside and the case remanded for further action consistent with this decision of the Board.

Issued: September 6, 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

⁶ *Charles Edgar*, 40 ECAB 223 (1988).