



machines. Appellant submitted several audiograms dated between 1977 and 1989, which had not been certified by physicians as being accurate.

By letter dated December 21, 2004, the Office requested that he submit additional evidence in support of his claim.

In March 2005, the Office referred appellant to Dr. Sage Copeland, a Board-certified otolaryngologist, for an audiologic and otologic evaluation of his hearing.

In an undated report, Dr. Copland indicated that testing for the left ear on April 12, 2005 at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 10, 10 and 15 respectively and that testing for the right ear at these frequency levels did not elicit any response. He diagnosed profound neurosensory hearing loss of the right ear and mild high-frequency neurosensory hearing loss of the left ear and concluded that these losses were not related to noise exposure during appellant's federal employment. Dr. Copland explained that appellant's hearing loss was not employment related because the standard threshold shift for such hearing loss was not present. He noted that on April 23, 2005 appellant underwent magnetic resonance imaging (MRI) scan testing on his ear canals which showed normal results.

By decision dated May 4, 2005, the Office denied appellant's claim on the grounds that the medical evidence did not establish that his claimed hearing loss was employment related. The Office indicated that the opinion of Dr. Copeland showed that his hearing loss was not related to exposure to noise at work.

Appellant requested a hearing before an Office hearing representative which was held on November 30, 2005. At the hearing, he discussed his exposure to noise at work and the progression of his hearing loss.

Appellant submitted a November 14, 2005 report in which Dr. Gerard D. Brocato, an attending Board-certified otolaryngologist. He noted a history of a "severe hearing loss of the right ear" and indicated that the "etiology of this hearing loss is in question." He stated that appellant reported that he was exposed to hazardous noise at work. Dr. Brocato examined appellant's ear canals and diagnosed a "profound sensorineural hearing loss, etiology unknown" and indicated that "multiple factors could have been at play." He stated that appellant needed to get a copy of a prefederal employment hearing test to see if he had normal hearing prior to his federal employment.

By decision dated and finalized January 27, 2006, the Office hearing representative affirmed the Office's May 4, 2005 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his claim including the fact that the individual is

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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.<sup>2</sup> The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury 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 compensable 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>3</sup>

### ANALYSIS

Appellant alleged that he sustained a hearing loss due to exposure to hazardous noise at work. The Board finds that appellant did not submit medical evidence showing that his claimed hearing loss was employment related.

Appellant submitted a November 14, 2005 report in which Dr. Brocato, an attending Board-certified otolaryngologist, noted his history of a severe hearing loss of the right ear and discussed his history of exposure to noise at work. However, Dr. Brocato did not provide any indication that exposure to noise during appellant’s federal employment contributed to his hearing loss. He diagnosed a “profound sensorineural hearing loss, etiology unknown” and indicated that “multiple factors could have been at play.” Dr. Brocato did not identify these “multiple factors” or provide a clear, unequivocal opinion that one of these factors was appellant’s exposure to noise at work.<sup>4</sup>

Moreover, the record contains evidence showing that appellant’s hearing loss was not due to exposure to noise during his federal employment. Dr. Copland, a Board-certified otolaryngologist who performed a second opinion evaluation, indicated that testing for the left ear on April 12, 2005 at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second revealed decibel losses of 20, 10, 10 and 15 respectively and that testing for the right ear at these frequency levels did not elicit any response. He diagnosed profound neurosensory hearing loss of the right ear and mild high-frequency neurosensory hearing loss of the left ear, but concluded that these losses were not related to noise exposure during appellant’s federal employment. Dr. Copland explained that appellant’s hearing loss was not employment related because the standard threshold shift for such hearing loss was not present.

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

<sup>4</sup> Appellant submitted several audiograms dated between 1977 and 1989, but these would not constitute medical evidence as they had not been certified by physicians as being accurate. Moreover, they contain no opinion on the cause of appellant’s hearing loss. *See Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' January 27, 2006 decision is affirmed.

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