United States Department of Labor
Employees' Compensation Appeals Board

J.H., Appellant	)	
and	)	**Docket No. 06-2081**
	)	**Issued: April 17, 2007**
DEPARTMENT OF THE INTERIOR, U.S. MINERALS MANAGEMENT SERVICE, Camarillo, CA, Employer	)	

Appearances:
Daniel M. Goodkin, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 6, 2006 appellant filed a timely appeal from decisions of the Office of Workers' Compensation Programs dated April 28 and July 17, 2006, which denied his claim. 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 met his burden of proof to establish that he sustained noise-induced hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On November 4, 2005 appellant, then a 64-year-old former offshore rig inspector who had retired in June 2005 filed a Form CA-2, occupational disease claim, alleging that exposure to loud noise during his 14 years of federal employment caused a bilateral severe high frequency sensorineural hearing loss that he first noticed in 1992. He submitted an unsigned report dated

September 22, 2005 in which Dr. Richard P. Wikholm, Board-certified in otolaryngology, noted examining appellant. Dr. Wikholm advised that an audiogram demonstrated normal hearing bilaterally through 1500 hertz (Hz) and severe sensorineural hearing loss at 2000 through 8000 Hz bilaterally. Appellant also submitted employing establishment clinic notes and audiograms dating from February 11, 1992 to June 16, 2003.[1]

By letters dated December 6, 2005, the Office informed appellant of the type evidence needed to support his claim and requested that the employing establishment provide employment and noise exposure information. On December 15, 2005 the employing establishment advised that appellant was routinely exposed to loud noise during his federal employment in that he was required to travel by helicopter to offshore rigs where he performed inspections of noisy, heavy equipment. In a December 27, 2005 letter, appellant described his employment history, noting that from February 1969 to June 1986 he worked for Union Oil and this included periods when he traveled by helicopter to offshore platforms. He stated that, following his federal retirement, in November 2005 he began private employment, mostly working on offshore platforms. Appellant reiterated that he first noticed his hearing loss in 1992.

On January 6, 2006 the Office referred appellant to Dr. David R. Hantke, a Board-certified otolaryngologist, who was provided with the medical record and a statement of accepted facts that accepted that appellant was exposed to occupational noise levels above 85 decibels for periods during his federal employment from June 1991 to June 2005. He was asked to determine the nature and extent of appellant's hearing loss and its relationship to his federal employment.

In a report dated January 24, 2006, Dr. Hantke noted appellant's federal employment history and his review of multiple prior audiograms.[2] He made examination findings and provided audiometric results, attaching a January 24, 2006 audiogram with certification. Dr. Hantke diagnosed sharp, high frequency and bilaterally symmetrical sensorineural hearing loss and advised that there had been no significant interval progression of appellant's hearing loss over the period of the audiograms. He concluded that appellant's hearing loss was "entirely consistent with his stated history of noise exposure." In a report dated February 16, 2006, Dr. Hantke noted that additional testing at 6000 Hz failed to demonstrate any additional findings of significance.

The case was then referred to an Office medical adviser, Dr. David N. Schindler, Board-certified in otolaryngology, who in an April 3, 2006 report noted his review of the record and Dr. Hantke's report. He advised:

> "After reviewing the records, I submit that the condition found on the examination of January 24, 2006 was not aggravated by conditions of federal employment. The diagnosis is bilateral high frequency neurosensory hearing loss. There is no significant interval progression between the preemployment audiogram of February 11, 1992 and the current audiogram."

[1] It is unclear from the record whether the audiograms were done for the employing establishment.

[2] The only other employment noted by Dr. Hantke was that appellant was a cook during his service with the Air Force.

By decision dated April 28, 2006, the Office denied the claim, finding that, while appellant had employment-related noise exposure, there had been no significant interval progression from his base-line audiogram of February 11, 1992 and concluded that his hearing loss predated his federal employment.

On May 9, 2006 appellant, through his attorney, requested reconsideration, arguing that the February 11, 1992 audiogram was not preemployment because appellant began his federal employment in June 1991, that the Office did not consider Dr. Wikholm's opinion, that Dr. Hantke's opinion supported acceptance and that the Office medical adviser's opinion was of diminished probative value because he did not examine appellant.

In a June 27, 2006 report, Dr. Schindler, the Office medical consultant, noted appellant's employment with Union Oil from 1969 to 1986 and reiterated his previous conclusions. By decision dated July 17, 2006, the Office denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.[5]

[3] 5 U.S.C. §§ 8101-8193.

[4] *Gary J. Watling*, 52 ECAB 278 (2001).

[5] *Solomon Polen*, 51 ECAB 341 (2000).

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[6] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[7] Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[8]

Office procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.[9] A physician conducting an otologic examination should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.[10]

ANALYSIS

The Board finds this case is not in posture for decision. The Office found and the Board agrees that the factual evidence establishes appellant's occupational exposure to noise in the course of his federal employment. The question for determination, therefore, is whether the accepted noise exposure caused appellant's severe bilateral sensorineural hearing loss.

[6] *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[7] *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[8] *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

[9] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1995); *Luis M. Villanueva*, 54 ECAB 666 (2003).

[10] *Luis M. Villanueva*, *supra* note 9.

The Board finds that Dr. Wikholm's report is of diminished probative value. It is unsigned and does not include a certified audiogram to support his findings.[11] Thus, in January 2006, the Office properly referred appellant for additional examination and testing with Dr. Hantke as appellant submitted no evidence which complied with the required standard stated above.[12]

The Board, however, finds Dr. Hantke's report insufficient. He opined that appellant's hearing loss was due to employment-related noise exposure but was not provided with a proper employment history. Neither the statement of accepted facts provided to him, nor appellant's report of employment at the examination indicated that appellant had been employed from 1969 to 1986 in similar employment prior to his federal service. It is well established that medical reports must be based on a complete and accurate factual and medical background and medical opinions based on an incomplete or inaccurate history are of diminished probative value.[13] Furthermore, while the Office medical adviser opined that appellant's hearing loss preceded his federal employment based on the February 11, 1992 audiogram which he characterized as "preemployment," appellant stated that he began his federal employment in June 1991.[14] In its December 15, 2005 letter, the employing establishment did not provide a beginning date of appellant's employment. This case must, therefore, be remanded to the Office.

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[15] When the Office selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.[16] Because the Office referred appellant to Dr. Hantke, it has the responsibility to obtain a report that will resolve the issue of whether appellant's hearing loss was caused by his federal employment.[17] On remand, the Office should ask the employing establishment to provide the date of appellant's federal employment and any preemployment medical information including audiograms. The Office should then prepare an updated statement of accepted facts which includes appellant's complete employment history and request that Dr. Hantke provide a supplementary report to determine if appellant's binaural high frequency hearing loss was caused by his federal employment. After this and such further development deemed necessary, the Office shall issue an appropriate decision.

[11] *Supra* note 9.

[12] *Id.*

[13] *See James R. Taylor*, 56 ECAB ___ (Docket No. 05-135, issued May 13, 2005).

[14] The date June 16, 1991 is found on several medical reports.

[15] *See Jimmy A. Hammons*, 51 ECAB 219 (1999).

[16] *Steven P. Anderson*, 51 ECAB 525 (2000).

[17] *Id.; see Peter C. Belking*, 56 ECAB ____ (Docket No. 05-655, issued June 16, 2005).

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant's binaural high frequency hearing loss was caused by his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 17 and April 28, 2006 be vacated and the case remanded to the Office for proceedings consistent with this opinion of the Board.

Issued: April 17, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board