United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 07-843**
	)	**Issued: August 9, 2007**
U.S. POSTAL SERVICE, LITTLE ROCK POSTAL & DISTRIBUTION CENTER, Little Rock, AK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 6, 2007 appellant filed a timely appeal from a January 22, 2007 merit decision of the Office of Workers' Compensation Programs that denied his occupational disease claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he developed an occupational disease in the performance of duty.

FACTUAL HISTORY

On July 27, 2005 appellant, then a 58-year-old electronic technician, filed an occupational disease claim alleging that he developed bilateral Meniere's disease, which caused hearing loss, tinnitus, imbalance, vertigo and dizziness, in the performance of duty. He stated that he first became aware of his condition on March 15, 2005 and first related it to his employment on July 26, 2005. Appellant stopped work on July 24, 2005 and did not return.

In an August 11, 2005 statement, appellant explained that he experienced acoustical trauma during military service but also asserted that the employing establishment's public address (PA) system was excessively loud and that he was occasionally required to travel through a loud "air handler/air compressor" room to get to the "ET library." He explained that he was exposed to "max noise level" for between four to six hours in an average workday. Appellant also submitted a "Meniere's journal" detailing his symptoms. The employing establishment submitted a position description, progress notes and audiometric testing data.

In a March 13, 2005 report, Dr. John J. Shea, Jr., a Board-certified otolaryngologist, diagnosed Meniere's disease, left ear greater than right and noted that appellant's medical history was significant for exposure to "loud noise of weapons" in Vietnam during his military service. On April 7, 2005 he explained that appellant's complaints of moderate bilateral hearing loss and ringing noise were caused by his Meniere's disease.

Appellant also provided operative reports detailing two ear surgeries that he underwent while working for the employing establishment. On January 23, 2001 Dr. Michael McGhee, a Board-certified otolaryngologist, performed a right tympanoplasty and recorded preoperative and postoperative diagnoses of "tympanic membrane perforation right ear" with "conductive hearing loss." On July 7, 2003 Dr. John R.E. Dickens, an otolaryngologist, performed a left tympanoplasty and recorded preoperative and postoperative diagnoses of "recurrent perforation, left tympanic membrane." On May 24, 2004 he noted appellant's complaints of swelling, tenderness, popping or inability to pop and tinnitus in both ears. Dr. McGhee diagnosed bilateral "fairly significant eustachian tube dysfunction," mixed right hearing loss and sensorineural left hearing loss and bilateral tinnitus. He was unable to determine the cause of appellant's complaints of "vibration in the ear and thumping sound."

In a September 12, 2005 form report, Dr. Shea noted appellant's symptoms of hearing loss, increased inner ear pressure and tinnitus and diagnosed Meniere's disease. He checked a box agreeing that appellant's history of injury corresponded to an occupational disease. In a September 23, 2005 narrative report, Dr. Shea stated that he believed that the direct cause of appellant's Meniere's disease was "acoustical trauma in military service and surgical trauma of bilateral tympanoplasty." However, he opined that appellant's federal employment accelerated and aggravated his ear conditions. Dr. Shea stated:

> "I am confident the acoustic trauma while in military service caused his ear problems and his present conditions were latent until 1999 when he was exposed to long-term excessive noise in his workplace, due to high speed mail sorting equipment, loud PA system and noisy towing equipment. [Appellant] was certainly predisposed because of acoustical trauma incurred in military service, but if not precipitated, his hearing loss and Meniere's disease were accelerated and permanently aggravated by his six years of employment with the [employing establishment]."

Dr. Shea recommended that appellant "terminate his employment because his current work environment would only aggravate his Meniere's disease and continue to damage his hearing."

On October 28, 2005 the Office referred appellant to Dr. David Hatfield, a Board-certified otolaryngologist, for a second opinion examination. An October 18, 2005 statement of accepted facts indicated that "on a busy night, noise exposure was every 10 minutes, lasting 20 seconds to 2 minutes."

In a November 14, 2005 report, Dr. Hatfield noted appellant's history of acoustical trauma incurred in military service and symptoms of hearing loss, tinnitus, dizziness and vertigo. He explained that appellant experienced "substantial risk" of dizziness due to his work around high speed mail sorting equipment and occasional tasks performed while elevated in a lift. Dr. Hatfield concluded that appellant was unable to perform traditional work activities but stated:

> "As to whether that is the direct cause of this problem is more difficult. My suspicion is that this problem goes back to his military injury in Vietnam. That was the instigating damage that caused the subsequent development of his Meniere's syndrome. Subsequent surgeries have not helped. I do not think the current noise is causative of his problem and that is, in fact, controversial. There is no medical assurance or data that would indicate that this amount of noise exposure would contribute to the development of his Meniere's disease compared to what he has already had. It probably has contributed to some degree to continual loss of hearing that has occurred, but on the other hand Meniere's in and of itself will contribute to continual loss of hearing."

Dr. Hatfield stated that he could not "directly link" appellant's hearing loss "causatively to his current employment as opposed to his past history and the Meniere's disease that he has." In an accompanying Office form report, he checked a box stating that appellant's sensorineural hearing loss was due "in part" to his federal employment. Nonetheless, Dr. Hatfield explained, "noise exposure at this occupation is tiny compared to the previous exposure injury, surgery and disease he had previously." He also answered "no" to the question of whether workplace noise exposure was of sufficient intensity to have caused appellant's hearing loss.

The Office subsequently received November 16 and December 21, 2005 reports from Dr. Christopher Danner, a Board-certified otolaryngologist, who confirmed Dr. Shea's diagnosis of bilateral Meniere's disease and advised that appellant's Meniere's disease was "likely secondary to an autoimmune component."

On January 13, 2006 an Office medical adviser opined that appellant had bilateral Meniere's disease and bilateral hearing loss caused by middle ear disease. The medical adviser noted that Dr. Hatfield stated that he could not "directly link" appellant's hearing loss and Meniere's disease to noise exposure while a federal employee but checked a box opining that the hearing loss was due in part to noise exposure during his federal employment. He concluded: "In my opinion, there is inadequate evidence in the record to relate [appellant's] hearing loss to job noise exposure." The medical adviser recommended that appellant be referred for another opinion.

On February 2, 2007 the Office referred appellant to Dr. Charles E. Hollingsworth, a Board-certified otolaryngologist, for another second opinion evaluation. In a March 15, 2006 report, Dr. Hollingsworth noted appellant's complaints of "worsening sensorineural hearing loss" and vertigo as well as appellant's diagnosed Meniere's disease. He stated:

> "[Appellant's] right TM [tympanic membrane] perforations throughout the years are obviously not related to his … employment. His left cholesteatoma with eardrum reconstruction is not work related. [Appellant's] Meniere's disease, which is a metabolic problem, likewise is not work related. Should [he] truly have inner ear autoimmune disease, this also would not be work related. Both Meniere's disease and autoimmune disease can cause devastating sensorineural hearing loss. Both can also lead to chronic unsteadiness, vertigo and/or nausea. It is my medical opinion that [appellant] has severe bilateral sensorineural hearing loss. This is due to a combination of noise exposure prior to [f]ederal employment, progressive Meniere's disease and possible inner ear autoimmune disease. I do not consider his present hearing status work related. Likewise his chronic low grade vertigo is not due to work[-]related conditions."

Dr. Hollingsworth also checked a box on the Office's form report indicating that appellant's sensorineural hearing loss was not due to his federal civilian employment.

By decision dated March 30, 2006, the Office denied appellant's occupational disease claim finding that appellant's ear conditions and hearing loss were not work related.

On April 4, 2006 appellant requested an oral telephone hearing.

After appellant requested a hearing, an Office hearing representative, in a June 23, 2006 decision, remanded the case upon finding that the statement of accepted facts inaccurately stated the frequency and duration of appellant's noise exposure at work. The hearing representative directed additional factual and medical development.

Subsequently, the employing establishment submitted information concerning workplace noise, including an Occupational Safety and Health Administration's inquiry and the employing establishment response to complaints about the volume on the PA system. The employing establishment noted that it investigated on October 8, 2003 and found that the maximum noise emitted by the PA system was 62.4 decibels. The employing establishment also submitted noise exposure data, some of which was previously of record, for various areas within the employing establishment. This data, from July 13, 2005, revealed average sound levels of up to 83.1 decibels with a maximum sound level of 93.8 decibels. The Office modified the statement of accepted facts to reflect that appellant was exposed to between four and six hours of machine noise and a loud public address system per shift.

On December 5, 2006 the Office referred appellant to Dr. Hollingsworth for a follow-up examination. In a December 19, 2006 report, Dr. Hollingsworth reiterated his opinion that appellant's sensorineural hearing loss was not caused by noise exposure during his federal civilian employment. He explained that appellant had preexisting Meniere's disease with "possible autoimmune inner ear problems" and noted Dr. Shea's treatment. Dr. Hollingsworth

explained: "Audiograms around this time revealed worsening hearing in both ears across all frequencies. Serial audiograms revealed a fluctuating loss with some mild improvement on one test and worsening on the next. This is consistent with Meniere's disease." He concluded that appellant's sensorineural hearing loss was caused by noise exposure incurred prior to his federal civilian employment and also explained that, while appellant complained of dust in the employing establishment facilities, this would not contribute to his sensorineural hearing loss. Dr. Hollingsworth explained that sensorineural hearing loss is a condition which accumulates over a period of years and does not ordinarily result in the type of rapid deterioration appellant experienced. Rather, he stated that appellant's "hearing problems are metabolic in nature and have nothing to do with workplace noise exposure. I know [appellant] thinks his workplace conditions worsened his Meniere's disease, but it would have worsened regardless of any working environment."

By decision dated January 22, 2007, the Office denied appellant's occupational disease claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] 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.[3]

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.[4] The test for determining whether appellant sustained a compensable occupational disease or injury is three-pronged. To establish the factual elements of the claim, appellant 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 the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the 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 factors identified by the claimant."[5]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] D.D., 57 ECAB ___ (Docket No. 06-1315, issued September 14, 2006).

[5] *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), *citing Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 3.

The medical 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.[6] The opinion of the physician must be based on a complete factual and medical background of the claimant[7] and must be one of reasonable medical certainty[8] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

ANALYSIS

The Board finds that appellant did not meet his burden of proof in establishing that he developed an occupational disease in the performance of duty. The record reflects that appellant had preexisting Meniere's disease, tinnitus and hearing loss dating from his time in military service but that he was also exposed to some degree of noise from various sources while working for the employing establishment. However, appellant has not met his burden of proof in establishing that his ear conditions and hearing loss are causally related to conditions of his federal civilian employment.

In support of his claim, appellant submitted several medical reports from Dr. Shea. In his September 23, 2005 report, Dr. Shea determined that appellant's condition was rooted in noise exposure during his military service and that his two ear surgeries also contributed to appellant's hearing loss and other conditions. However, he opined that appellant's hearing problems and Meniere's disease may have been accelerated or aggravated by noise exposure at the employing establishment. However, Dr. Shea's opinion does not establish a causal relationship between appellant's hearing problems and his federal civilian employment because it does not include sufficient explanation or rationale to support his conclusions. He noted that appellant was exposed to noise from high speed mail sorting equipment, a loud public address system and noisy towing equipment. However, Dr. Shea did not address the frequency and duration or the intensity of these sources of noise exposure or provide detailed explanation as to how they affected appellant's preexisting Meniere's disease and inner ear problems. He also did not otherwise explain why appellant was not solely due to the natural progression of his preexisting conditions. Dr. Shea's other opinions as well as the operative reports from Dr. McGhee and Dr. Dickens and the functional capacity evaluation from Dr. Danner did not address causal relationship and thus are of limited probative value on that issue.[10]

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[6] *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[7] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[8] *John W. Montoya*, 54 ECAB 306 (2003).

[9] *Judy C. Rogers*, 54 ECAB 693 (2003).

[10] *See, e.g., Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

The Office referred appellant to Dr. Hatfield for a second opinion. Dr. Hatfield discussed causal relationship and concluded, by checking a box on a form report, that appellant's condition was due in part to noise exposure during his tenure with the employing establishment. However, he also indicated on the same form report that appellant's workplace noise exposure was not of sufficient intensity or duration to have caused his hearing loss. Although Dr. Hatfield noted that, noise exposure during federal employment could have caused some of appellant's hearing problems, he explained that Meniere's disease also was known to cause hearing to deteriorate even without noise exposure. He characterized the question of causal relationship as "controversial" and concluded in his narrative report that appellant's hearing deterioration was ultimately caused by his preexisting Meniere's disease and inner ear condition as well as noise exposure incurred during his active military service in Vietnam, rather than by noise exposure incurred during federal civilian employment. On his form report, Dr. Hatfield stated that appellant's noise exposure at the employing establishment was "tiny" compared to the level of exposure incurred in the military and previous employment. The Board finds that Dr. Hatfield's opinion is not persuasive because it is equivocal in nature. The Board has held that medical opinions which are speculative or equivocal in nature are of limited probative value on the issue of causal relationship.[11] Accordingly, the Board finds that Dr. Hatfield's opinion is insufficient to establish appellant's claim.

An Office medical adviser reviewed Dr. Hatfield's report and opined that there was insufficient evidence to relate appellant's hearing loss to workplace noise. He recommended an additional opinion. The Board finds that, in view of the equivocal nature of Dr. Hatfield's report, the Office properly referred appellant for another second opinion with Dr. Hollingsworth.

On March 15, 2006 Dr. Hollingsworth reviewed the evidence, examined appellant and concluded unequivocally that his condition was not causally related to his federal civilian employment. He explained that Meniere's disease is a metabolic condition, not caused by any work factors, that is known to cause hearing deterioration. Dr. Hollingsworth also suggested that appellant might have an inner ear autoimmune disease, likewise not work related, that contributed to his condition. He noted that appellant's history was significant for far greater noise exposure in the military, that he had two ear surgeries and that his nonwork-related metabolic conditions also contributed to his hearing loss. Dr. Hollingsworth concluded that it was very unlikely that the noise exposure appellant incurred with the employing establishment, which was relatively minor in comparison with his previous noise exposure and his nonwork-related ear conditions, caused his hearing deterioration. After the hearing representative directed further development, Dr. Hollingsworth provided a second report on December 5, 2006, reiterating his opinion that appellant's condition was not work related. He noted that appellant experienced rapid hearing loss that was far more consistent with a metabolic or autoimmune explanation than with the ordinarily gradual process of sensorineural hearing deterioration. Dr. Hollingsworth stated: "I know [appellant] thinks his workplace conditions worsened his Meniere's disease, but it would have worsened regardless of any working environment." He found no basis on which to attribute any hearing loss or audiological condition to appellant's employment.

[11] *See Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

On appeal, appellant asserts that the Office, in referring him to more than one second opinion specialist, engaged in "doctor shopping" pursuant to *Carlton L. Owens*.[12] However, the present case is distinguished from *Owens* which involved a situation where the medical referral was to resolve a medical conflict under 5 U.S.C. § 8123(a). In the present case, neither medical referral was for the purpose of resolving a medical conflict under section 8123(a). Instead, they were second opinion referrals. Section 8123(a) authorizes the Office to require an employee who claims disability as a result of an employment injury to undergo such physical examination as it deems necessary. The determination of the need for an examination, the type of examination, the choice of locale and the choice of medical examiners are matters within the province and discretion of the Office. The only limitation on this authority is that of reasonableness.[13] As noted, Dr. Hatfield's opinion was equivocal as it appeared to both support and negate causal relationship. There also is no evidence that the Office sought a particular opinion by posing leading questions to either second opinion physician.[14] In these circumstances, the Office acted reasonably in referring appellant to Dr. Hollingsworth.[15]

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he developed an occupational disease in the performance of duty.

[12] 36 ECAB 608 (1985).

[13] *John Watkins*, 47 ECAB 597 (1996).

[14] *See Brenda C. McQuiston*, 54 ECAB 816 (2003) (where the Board found that the Office posed leading questions to a second opinion physician).

[15] Appellant also asserts that Dr. Shea's reports were not properly considered. However, as noted in the text of this decision, Dr. Shea's reports are insufficient to establish appellant's claim.

ORDER

IT IS HEREBY ORDERED THAT the January 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 9, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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