



mechanic appellant was exposed to hazardous noise from trucks, air tools, air compressors and power generators. He did not wear hearing protection devices while working as a mechanic. Since August 1995, appellant worked as a supervisor in an office setting and he was not exposed to hazardous noise. Additionally, he was exposed to hazardous noise during military service from February 1966 to February 1968. Appellant also served during the Desert Storm conflict in January 2001, where he was exposed to hazardous noise from jet planes. He indicated that a Scud missile once exploded close to his area.

Dr. Mark J. Maslan, a Board-certified otolaryngologist and Office referral physician, examined appellant on June 7, 2006. Based on appellant's medical and occupational histories, physical examination findings and audiometric studies, Dr. Maslan diagnosed bilateral sensorineural hearing loss and otitis media. As to the cause of appellant's hearing loss, Dr. Maslan stated that he did not believe it was related to appellant's work since 1995. He explained that the pattern was not typical of noise-induced hearing loss. While appellant had some history of noise exposure in the past, Dr. Maslan did not believe that there was significant noise present to account for the type of hearing loss appellant presently demonstrated.

The district medical adviser reviewed Dr. Maslan's report and advised that appellant's claim could not be accepted for employment-related hearing loss.

By decision dated September 8, 2006, the Office denied appellant's occupational hearing loss claim. The Office found that the medical evidence established that appellant's hearing loss was not employment related.

### **LEGAL PRECEDENT**

A claimant seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup>

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;

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> 20 C.F.R. § 10.115(e), (f) (2006); *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.*

and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>3</sup>

### ANALYSIS

The Board finds that the case is not in posture for decision. Dr. Maslan, the Office referral physician, was confused about the type and duration of appellant's federal civilian occupational noise exposure. He indicated that appellant's post-1995 occupational exposure was insufficient to cause his current level of hearing loss. Dr. Maslan attributed appellant's pre-1995 hearing loss to prior military service, which based on the current record either ended in February 1968 or some time after March 1978.<sup>4</sup> However, Dr. Maslan did not address the significance of appellant's occupational exposure during the period beginning in August 1983 through the time appellant assumed his supervisory responsibilities in August 1995. The district medical adviser did not offer an opinion as to whether Dr. Maslan's assessment was proper. He merely advised the Office that it could not accept appellant's claim based on the doctor's findings.

Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>5</sup> Once the Office undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>6</sup> The reports provided by Dr. Maslan and the district medical adviser are not rationalized and, therefore, the Office did not properly discharge its responsibilities in developing the record.<sup>7</sup> On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate specialists for an evaluation and a rationalized medical opinion regarding whether appellant's claimed bilateral hearing loss is causally related to his federal civilian occupational exposure. After the Office has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

### CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>3</sup> *Victor J. Woodhams, supra* note 2.

<sup>4</sup> It is unclear from the record whether appellant's tenure with the National Guard beginning March 1978 was as a federal civilian employee or whether he was on active duty. The Office in its May 9, 2006 statement of accepted facts characterized appellant's March 1978 involvement with the National Guard as military service. However, it is not apparent from the record how the Office reached this conclusion.

<sup>5</sup> *Horace L. Fuller*, 53 ECAB 775, 777 (2002); *James P. Bailey*, 53 ECAB 484, 496 (2002); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>6</sup> *Richard F. Williams*, 55 ECAB 343, 346 (2004).

<sup>7</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2006 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Issued: March 26, 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