United States Department of Labor
Employees' Compensation Appeals Board

G.J., Appellant	)	
and	)	**Docket No. 07-1856**
	)	**Issued: November 27, 2007**
TENNESSEE VALLEY AUTHORITY, BROWNS FERRY, Decatur, AL, Employer	)	

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 24, 2007 appellant filed a timely appeal from a June 5, 2007 Office of Workers' Compensation Programs' merit decision. Under 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 met his burden to establish that he sustained a hearing loss in the performance of duty

FACTUAL HISTORY

On January 15, 2007 appellant, a 53-year-old steamfitter and welder, filed a Form CA-2 claim for benefits, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. He stated that he first became aware that he had sustained a hearing loss on January 1, 1990.

By letter dated February 7, 2007, the Office advised appellant that it required factual and medical evidence to determine whether he was eligible for compensation benefits for an

employment-related hearing loss. The Office asked appellant to submit documentation pertaining to his work-related exposure to loud noise, including his employment history, and a copy of all medical examinations and audiograms pertaining to hearing or ear problems. The Office requested that appellant submit this evidence within 30 days.

Appellant submitted a handwritten summary of his employment history, received by the Office on February 19 and 23, 2007, in which he indicated that he had an 11-year history of exposure to loud noise. He indicated that he was exposed to loud noise from heavy equipment blasting, chainsaws, hammers, power saws, gas welding machines, pump compressors and other construction equipment while working as a laborer, carpenter's helper, steamfitter and welder with the Tennessee Valley Authority from 1977 to 1980 and 1982 to 1990. Appellant stated that he became aware that he had sustained a work-related hearing loss when he underwent a hearing examination on December 27, 2006. The Office accepted appellant's account of his history of exposure to loud noise and incorporated this history into the statement of accepted facts. However, appellant did not submit any medical evidence, as requested by the Office, including a report documenting the claimed December 27, 2006 hearing examination.

On April 6, 2007 the Office informed appellant that it had scheduled an appointment for a second opinion evaluation with an otolaryngologist to determine the extent of his noise-induced hearing loss resulting from his federal employment. On April 6 and 12, 2007 the Office claims examiner instructed the district Office to refer appellant for a second opinion evaluation with an otolaryngologist to determine the extent of noise-induced hearing loss resulting from his federal employment. By memorandum dated June 4, 2007, however, the claims examiner indicated that the second opinion examination had been cancelled due to lack of medical documentation.

In a decision dated June 5, 2007, the Office denied appellant's claim for an employment-related hearing loss. The Office stated that appellant had failed to submit medical evidence to support his claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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.[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]

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

[1] 5 U.S.C. § 8101 *et seq*.

[2] *Joe D. Cameron,* 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

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 employment 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 employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical 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 appellant'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.[4]

ANALYSIS

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

The Office accepts that appellant experienced the alleged employment factors. However, the question of whether employment caused a personal injury generally can be established only by medical evidence,[5] and appellant has not submitted medical evidence to establish that the employment caused a personal injury.

Appellant asserted in his February 23, 2007 statement that he underwent a December 27, 2006 hearing examination which demonstrated a work-related hearing loss; however, he failed to submit a copy of a medical report or any documentation corroborating that he underwent such testing. The Office noted in its June 5, 2007 decision that it had asked appellant in its February 7, 2007 developmental letter to submit a copy of all medical examinations and audiograms pertaining to his alleged hearing loss, but that appellant had not submitted any medical evidence.

The Board notes that the Federal (FECA) Procedural Manual at Chapter 2.806.05 (October 2005), Part 2, Developing Medical Evidence, indicates that appellant is required to submit some medical evidence which states a diagnosis and supports causal relationship. In hearing loss cases, the Office is required to refer the claimant for examination by a qualified specialist if the report submitted by the claimant does not meet all of the Office's requirements for adjudication. In the instant case, however, appellant did not submit a report.

[4] *Id.*

[5] *See John J. Carlone*, 41 ECAB 353 (1989).

The Board finds that the Office properly determined that appellant has no ratable hearing loss causally related to factors of his federal employment as appellant did not submit any medical evidence in support of his claim. The Board will affirm the June 5, 2007 Office decision.

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained a hearing loss in the performance of duty.[6]

ORDER

IT IS HEREBY ORDERED THAT the June 5, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: November 27, 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

[6] On appeal, appellant has submitted new evidence. However, the Board cannot consider new evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 501(c).