

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.H., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Leonard Wood, MO, Employer**

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**Docket No. 07-1310  
Issued: October 15, 2007**

*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 April 12, 2007 appellant filed a timely appeal from an Office of Workers' Compensation Programs' hearing representative's decision dated January 23, 2007. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this schedule award decision.

**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 September 26, 2005 appellant, a 59-year-old heavy mobile equipment repairman, 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 February 22, 2005. Accompanying the claim form was a letter from appellant describing his employment history in which he stated that he had a 32-year history of

exposure to loud noise; he also indicated that the employing establishment informed him that he had a high frequency hearing loss. Appellant submitted documentation from his employing establishment corroborating this information.

A statement of accepted facts dated August 15, 2005 indicated that appellant had been exposed to hazardous noise while working for the employing establishment in various positions since 1971.

On August 26, 2005 the Office scheduled appellant for an audiologic and otologic evaluation with Dr. Michael Simmons, Board-certified in otolaryngology. In a report dated October 5, 2005, Dr. Simmons stated that appellant had a high frequency, bilateral sensorineural hearing loss. He found, however, that there was a mild threshold shift at 3,000 hertz (Hz), consistent with presbycusis. Dr. Simmons also stated that the absence of any substantial dip at 4,000 Hz, combined with a gradual slope at high frequencies, suggested early presbycusis. He indicated that his findings were in accordance with the statement of accepted facts. Based on this history, Dr. Simmons found that any hearing loss appellant experienced was not employment related.

On October 15, 2005 an Office medical adviser adopted Dr. Simmons' opinion that appellant's hearing loss was not employment related. The Office medical adviser noted that Dr. Simmons indicated that the hearing loss demonstrated by the audiogram administered on October 5, 2005 showed findings consistent with early presbycusis.

In a decision dated October 18, 2005, the Office found that appellant had not suffered an employment-related hearing loss based on the medical evidence of record.

On November 7, 2005 appellant requested an oral hearing, which was held on October 18, 2006. He submitted a December 28, 2005 report from Dr. Larry Mazzeo, an audiologist, who expressed disagreement with Dr. Simmons' opinion that appellant's hearing loss was not work related. Dr. Mazzeo stated:

“While a sensorineural notching at 4,000 Hz is often seen in noise exposure, there is no clear cut pattern and the notching can occur at 3,000 Hz, 6,000 Hz or beyond. In fact, no notching in the audiogram is evident in many noise exposure cases. Just because the classic noise exposure audiologic pattern is not evident in this case, is not sufficient evidence and therefore a judgment solely of presbycusis is not accurate.”

Dr. Mazzeo attached a copy of a December 28, 2005 audiogram. The audiogram was not certified as accurate by a physician.

By decision dated January 5, 2007, an Office hearing representative set aside and remanded the October 18, 2005 Office decision, finding that there was a conflict in the medical evidence between the opinions of Drs. Simmons and Mazzeo as to whether appellant's bilateral, sensorineural hearing loss was employment related. The hearing representative instructed the Office to refer the case to an impartial medical specialist to resolve the conflict in medical evidence.

By decision dated January 23, 2007, the Office hearing representative vacated the January 5, 2007 decision. The hearing representative found that the opinion of Dr. Mazzeo, an audiologist, lacked the probative value of Dr. Simmons' opinion, as Dr. Simmons was a Board-certified otolaryngologist. She therefore determined that Dr. Simmons' opinion that appellant's hearing loss was not work related represented the weight of the medical evidence. The hearing representative affirmed and reinstated the October 18, 2005 Office decision denying compensation.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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 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 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 appellant, 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 appellant.<sup>4</sup>

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

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *Id.*

## 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,<sup>5</sup> and appellant has not submitted medical evidence to establish that the employment caused a personal injury.

The only medical evidence addressing the cause of appellant's hearing loss indicates that appellant's hearing loss was not caused by employment factors. In his October 5, 2005 report, Dr. Simmons reviewed audiometric testing performed on his behalf, reviewed appellant's medical and audiological records and noted findings on examination. He opined that, while appellant had sustained a high frequency sensorineural hearing loss as established by physical examination and audiometric testing, was not due to exposure to loud noise in his federal employment. Dr. Simmons indicated that the mild threshold shift at 3,000 Hz, the absence of any substantial dip at 4,000 Hz and the gradual slope at high frequencies, indicated early presbycusis. An Office medical adviser adopted Dr. Simmons' conclusion that appellant had not sustained any hearing loss due to noise exposure in a federal workplace.

Consequently, the Board finds that the Office properly determined that the medical evidence establishes that appellant's hearing loss is not due to factors of his federal employment in its October 18, 2005 decision.

Following the decision, appellant requested reconsideration and submitted Dr. Mazzeo's December 28, 2005 report and audiogram. However, an audiologist is not a physician within the meaning of the Act and therefore cannot provide a medical opinion regarding the cause of a condition.<sup>6</sup> Thus, the Office hearing representative properly found that Dr. Mazzeo's opinion lacked probative value and that the opinion of Dr. Simmons, a Board-certified otolaryngologist, represented the weight of the medical evidence. As there is no other probative medical evidence establishing that appellant sustained any additional permanent impairment, the Office properly found that appellant has no ratable hearing loss causally related to factors of his federal employment. The Board therefore affirms the January 23, 2006 decision of the Office hearing representative, affirming the October 18, 2005 denial of compensation.<sup>7</sup>

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<sup>5</sup> See *John J. Carlone*, 41 ECAB 353 (1989).

<sup>6</sup> *Sherman L. Henson*, 40 ECAB 341, 345 (1988); see 5 U.S.C. § 8101(2).

<sup>7</sup> The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 23, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: October 15, 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