United States Department of Labor
Employees' Compensation Appeals Board

J.P., Appellant	)	
and	)	**Docket No. 09-350**
	)	**Issued: August 10, 2009**
TENNESEE VALLEY AUTHORITY, GALLATIN FOSSIL PLANT, Gallatin, TN, 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
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 17, 2008 appellant filed a timely appeal from an October 22, 2008 merit decision of the Office of Workers' Compensation Programs denying 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 established that he sustained hearing loss in the performance of duty.

FACTUAL HISTORY

On April 25, 2008 appellant, a 69-year-old yard operations lead technician, filed an occupational disease claim (Form CA-2) for hearing loss.[1] He attributed his hearing loss to exposure to loud noises produced by heavy equipment. Appellant first recognized his hearing

[1] The record reflects that appellant retired on August 24, 2008.

loss and its relation to his employment on August 1, 1976. He noted that, because his hearing loss occurred gradually, he was unaware of it until the Tennessee Valley Authority (TVA) performed a hearing test and that, since that date, TVA medical personnel have been tracking his hearing condition through the hearing conservation program.

Appellant submitted no evidence in support of his claim, and by letter dated May 2, 2008, the Office notified him that the evidence of record was insufficient to support his claim and requested that he submit additional evidence. The Office provided examples of the type of evidence required.

Responding to the Office's letter, appellant submitted evidence documenting his employment history and noise exposure at each employment experience. He also submitted audiograms conducted at periodic intervals from 1969 through 2008.

Appellant's employment history included private construction companies and the current employing establishment, TVA. He was exposed to noise produced by bulldozers, draglines and dump trucks, etc., for many hours per day from 1962 to 1966 while employed by private construction companies. No hearing protection was provided. Appellant was employed by TVA from 1966 to 1970, where he was exposed to noise produced by bulldozers, graders, trucks and other heavy equipment for 6 to 10 hours per day. No hearing protection was provided. From 1970 to 2008, while employed by TVA, he was exposed to noise produced by bulldozers, scrapers, graders, diesel pumps, cranes, locomotives, loaders and powerhouse noise for several hours per day and earplugs were provided for portions of this employment experience.

Appellant noted that he has no hobbies involving exposure to loud noise and that his employment-related noise exposure continued up until his retirement on April 24, 2008.

The Office referred appellant, together with a statement of accepted facts to Dr. Jeffery Paffrath, a Board-certified otolaryngologist, for a second opinion evaluation. By report dated August 27, 2008, Dr. Paffrath reported that appellant's earliest audiogram was August 7, 1969. He opined that, "I do not feel that, despite his significant noise exposure, that it will be possible to say that the sensorineural hearing loss is due to noise exposure encountered in this claimant's federal civilian employment." Subsequent to that report, appellant underwent a magnetic resonance imaging (MRI) scan of the brain and Dr. Paffrath submitted a supplemental report, dated September 2, 2008. In that report, he reiterates that "I would like to emphasize that he does not have a significant shift in his hearing after presbycusis factor based on his federal employment. I would not be able, in my opinion, to say that the sensorineural hearing loss is due to the claimant's federal civilian employment.

By decision dated October 22, 2008, the Office denied appellant's claim because the evidence of record did not establish his hearing loss was causally related to his federal employment.

LEGAL PRECEDENT

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure

occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.[2] Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work for which he claims compensation is causally related to the accepted injury.[3]

ANALYSIS

The Board finds that appellant has not established that he sustained a hearing loss causally related to his federal employment. While the record establishes that he was surrounded by noise producing equipment throughout his employment, the medical evidence of record is insufficient to support his claim because it lacks a rationalized medical opinion establishing the requisite causal relationship between appellant's hearing loss and factors of his employment.

Appellant submitted results from audiograms conducted over a 39-year period commencing on August 7, 1969, but none of these were certified by a physician as either accurate or causally related to his employment. 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. These reports may not be considered probative medical evidence unless it can be established that the person completing the report is a physician as defined in 5 U.S.C. § 8101(2).[4] The Board finds these audiograms of no probative medical value and thus insufficient to meet appellant's burden of proof, because there is no indication that they were completed by a physician.

The only probative medical evidence of record was that furnished by the Office's second opinion physician, Dr. Paffrath, who, following examination and evaluation of an audiogram, opined that appellant's hearing loss was not causally related to appellant's federal employment. Dr. Praffrath asserted, based upon his analysis and examination, that appellant did not show a standard threshold shift of significance beyond presbycusis. The Board finds that as appellant has submitted no competent and probative rationalized medical evidence in support of his claim, he has failed to discharge his burden of proof and, therefore, has not established that he sustained hearing loss in the performance of duty.

CONCLUSION

The Board finds that appellant has not established that he sustained hearing loss in the performance of duty.

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[2] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. § 10.5(a)(15) and (16) ("traumatic injury" and "occupational disease or illness" defined).

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] 5 U.S.C. § 8101(2) defines physicians as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. *See Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the October 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2009
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board