

Between 1971 and 1977 appellant worked at a tool and die company as a machinist and wore hearing protection. Between 1984 and 1986 he drove a truck. Between 1986 and 2000 appellant was a wheel operator for a tile company and wore hearing protection. A February 6, 2007 audiogram revealed that appellant had bilateral hearing loss.

On May 9, 2007 the Office requested additional information, including an employment and noise exposure history, the date appellant first noticed his hearing loss and the date he realized his hearing loss might be related to his employment. It also requested copies of any medical reports related to his hearing problem or audiograms.

The employing establishment provided copies of appellant's first audiogram performed on April 2, 1979 and his last audiogram on March 25, 1982. An Office medical adviser reviewed the audiograms on June 6, 2007. He advised that the initial 1979 audiogram revealed a preexisting moderate to severe high frequency hearing loss which did not show worsening as of March 25, 1982.

By decision dated July 13, 2007, the Office denied appellant's claim on the grounds that it was not timely filed within three years of his last day at his federal employment, June 8, 1983. Appellant requested reconsideration.

The Office referred appellant, together with a statement of accepted facts, to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for an otologic examination and audiometric testing and an opinion as to the cause of his hearing loss.

In a March 11, 2008 report, Dr. Goldberg provided the results of audiometric testing and an otologic examination of appellant. He found that appellant had preexisting mid and high frequency sensorineural hearing loss bilaterally when he began his federal employment and his hearing loss did not worsen during that employment. Dr. Goldberg indicated that appellant's subsequent increased hearing loss occurred during his private employment after he left his federal job in 1983.

By decision dated March 28, 2008, the Office denied appellant's claim on the grounds that the medical evidence established that his hearing loss was not causally related to his federal employment. It made no specific findings regarding the timeliness of the claim.

LEGAL PRECEDENT -- ISSUE 1

Section 8122(a) of the Federal Employees' Compensation Act states that an original claim for compensation for disability or death must be filed within three years after the injury or death. Section 8122(b) provides that, in latent disability cases, the time limitation does not begin to run until the claimant is aware, or by the exercise of reasonable diligence should have been aware, of the casual relationship between the employment and the compensable disability.¹ The

¹ 5 U.S.C. § 8122(a)(1) and (2).

Board has held that, if an employee continues to be exposed to injurious working conditions after such awareness, the time limitation begins to run on the last date of this exposure.²

The statute provides an exception of the three-year limit for filing, which states that a claim may be regarded timely if an immediate superior had actual knowledge of the injury within 30 days, or if written notice of injury as specified in section 8119 was given within 30 days. The knowledge must be such as to put the immediate superior reasonably on notice of an on-the-job injury or death.³ The Board has held that a program of annual audiometric examinations conducted by an employing establishment may constructively establish actual knowledge of a hearing loss such as to put the immediate supervisor on notice of an on-the-job injury.⁴

ANALYSIS -- ISSUE 1

The Office initially denied appellant's claim on July 13, 2007 on the grounds that appellant's claim was not timely filed within three years of June 8, 1983, his last day of federal employment. Appellant requested reconsideration and alleged that his hearing loss was a latent disability and that he only became aware of a hearing loss, casually related to his federal employment, following a February 6, 2007 audiogram.

The evidence of record establishes that appellant had a preexisting moderate to severe high frequency hearing loss on the date he began his federal employment, April 2, 1979. During his federal employment he underwent employing establishment audiogram evaluations dating from April 2, 1979 until March 25, 1982. None of these audiogram evaluations however established an employment-related progressive hearing loss. Neither appellant nor the employing establishment were placed on notice that appellant had an employment-related hearing loss prior to his retirement on June 8, 1983. However, appellant thereafter underwent an audiometric examination of February 6, 2007, which revealed an increased hearing loss. Appellant therefore knew or should have known of his alleged latent condition on February 6, 2007. Appellant's February 14, 2007 claim for latent hearing loss was therefore timely filed.

LEGAL PRECEDENT -- ISSUE 2

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

² *Garyleane A. Williams*, 44 ECAB 441 (1993).

³ 5 U.S.C. § 8122(a)(1); *Eddie L. Morgan*, 45 ECAB 600 (1994).

⁴ *Jose Salaz*, 41 ECAB 743 (1990); *Kathryn A. Bernal*, 38 ECAB 470 (1987). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Time*, Chapter 2.801.6c (February 2000).

⁵ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.⁶

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that an employee's claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.⁷

ANALYSIS -- ISSUE 2

Appellant alleged that he sustained bilateral hearing loss due to exposure to hazardous noise at his federal job between April 2, 1979 and June 8, 1983.

An Office medical adviser reviewed copies of appellant's first audiogram performed on April 2, 1979 and his last audiogram on March 25, 1982. He advised that the initial 1979 audiogram revealed a preexisting moderate to severe high frequency hearing loss which did not show worsening as of March 25, 1982.

Dr. Goldberg reviewed the factual background of appellant's condition provided in the statement of accepted facts, examined appellant and provided the results of audiometric testing and an otologic examination. He found that appellant had preexisting bilateral mid and high frequency sensorineural hearing loss when he began his federal employment. Dr. Goldberg stated that appellant's hearing loss did not worsen during his period of federal employment. He opined that appellant's hearing loss was not caused by his federal employment between 1979 and 1983. Dr. Goldberg indicated that appellant's subsequent increased hearing loss occurred during his private employment after he left his federal job in 1983.

The Board finds that the medical evidence from Dr. Goldberg and the Office medical adviser establishes that appellant's hearing loss was not caused or aggravated by his federal employment between 1979 and 1983. The Office properly denied his hearing loss claim.

CONCLUSION

The Board finds that appellant failed to establish that his hearing loss is causally related to his federal employment.

⁶ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁷ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28, 2008 and July 13, 2007 are affirmed.

Issued: January 9, 2009
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