

employing establishment noted that appellant retired on October 1, 2004 and that she had a hearing loss prior to her employment.

Appellant worked in various positions for the Tennessee Valley Authority since 1990, most recently as an auxiliary operator and board operator in the prep plant from March 1999 through October 2004 and as a convoy car dumper operator in the bunker room from October 1998 through March 1999. In both of these positions, appellant was required to wear earplugs due to her work in high noise areas. According to the employing establishment, while working as an auxiliary operator, appellant worked five days a week for four to six hours around the coal belt and coal handling system, where readings from noise level surveys indicated 71 to 91 decibels.

On September 6, 2006 the Office scheduled a second opinion examination with Dr. Linda Mumford, a Board-certified otolaryngologist. On March 3, 2006 appellant was examined by Dr. Mumford and underwent an audiogram. After reviewing appellant's medical history and statement of accepted facts, Dr. Mumford concluded that appellant's hearing loss was not caused by her federal employment. While noting that appellant was exposed to noise significant to cause hearing loss during her employment from 1998 through 2004, he determined that appellant had a severe hearing loss in her left ear prior to her federal employment and that the subsequent decrease in binaural hearing during her employment was not consistent with noise-induced hearing loss.

By decision dated October 11, 2006, the Office denied appellant's claim, finding that appellant did not establish that she sustained an employment-related hearing loss. Thereafter, appellant, through her representative, requested an oral hearing.

In a letter dated May 31, 2007, the employing establishment contended that appellant had a high frequency hearing loss in her left ear prior to her employment and had been instructed to consult a physician about unilateral hearing loss since a June 4, 1995 audiogram. It attached a series of audiometric tests dated August 31, 1990 through December 29, 2003.

At the March 3, 2008 oral hearing appellant was represented by counsel. She submitted a November 20, 2006 medical report from Dr. Uday V. Dave, a Board-certified otolaryngologist, who indicated that he obtained a history from appellant, who reported a gradual decrease in her hearing for several years. Appellant contended that she had been exposed to noises from coal washing and turbines for 11 years. Dr. Dave found that appellant sustained a neurosensory hearing loss bilaterally, mild in the right ear and severe at high tones in the left ear. He indicated that appellant gave a history of exposure to noises.

In an April 8, 2008 decision, the hearing representative affirmed the October 11, 2006 decision, on the grounds that the record did not support appellant's claim that she sustained a hearing loss caused by her federal employment. The hearing representative noted that Dr. Mumford's report was not contradicted by additional medical evidence, as Dr. Dave did not offer an opinion as to the cause of appellant's hearing loss.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence,² including that she is an "employee" within the meaning of the Act³ and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

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.⁶

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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.

ANALYSIS

The issue is whether appellant has established that her exposure to noise during her federal employment caused her hearing loss. Appellant has the burden to prove, with rationalized medical evidence, that her hearing loss was causally related to her employment factors. The Board finds that she has not submitted sufficient medical evidence to meet her burden of proof.

The only medical evidence of record discussing the cause of appellant's hearing loss is the October 5, 2006 second opinion by Dr. Mumford, a Board-certified otolaryngologist, who concluded that appellant did not sustain an employment-related hearing loss, finding that she had a preexisting hearing loss in her left ear prior to her employment. Dr. Mumford advised that any

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ___ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ___ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ___ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ___ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

subsequent degradation of her hearing while employed was not consistent with a pattern of noise-induced hearing loss.

The November 20, 2006 medical report of Dr. Dave failed to address the issue of causation. The only notation of appellant's work-related noise exposure is contained in the history section, where Dr. Dave indicated that the information was obtained by appellant. Dr. Dave did not provide a full history of appellant's preexisting left ear hearing loss or contrast this with her noise exposure during her federal employment. Because he did not offer an opinion on the cause of appellant's hearing loss, his report is of diminished probative value.⁷

The Board finds that the only medical evidence of record addressing causation supports the finding that appellant's hearing loss is not employment related. Therefore, appellant has not met her burden of proof in establishing causation.

On appeal, appellant contends that there is a conflict in medical evidence between Dr. Dave and Dr. Mumford. For the reasons stated, the Board finds that no conflict exists. Both physicians concurred that appellant sustained a hearing loss; however, Dr. Dave did not address the cause of appellant's hearing loss. Because Dr. Dave did not offer any opinion as to the cause of appellant's hearing loss, Dr. Mumford's finding that the pattern of her hearing loss is not work related, remains uncontradicted.⁸

CONCLUSION

The Board finds that appellant failed to establish that she sustained a hearing loss in the performance of duty.

⁷ See *Robert Broome*, 55 ECAB 339 (2004); *Linda I. Sprague*, 48 ECAB 386 (1997).

⁸ See 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321. See also *Elaine Sneed*, 56 ECAB 373 (2005).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2008 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: January 12, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board