



history of work-related noise exposure, and a physician's report containing a diagnosis and an opinion as to the cause of the diagnosed condition.

In an undated statement, appellant indicated that her exposure to noisy machines, such as forklifts, eight hours per day, five days per week, throughout her tenure at the employing establishment from 1979 through 1988, had caused significant bilateral hearing loss. In support of her claim, she submitted reports of audiograms dated December 13, 2002 to September 25, 2007, either unsigned or bearing illegible signatures, reflecting bilateral hearing loss.

On April 15, 2008 the employing establishment controverted appellant's claim, contending that her claim was untimely and that her hearing loss was not work related. The record contains a report of a May 3, 1982 audiogram, reflecting responses of 40 decibels at 500, 1,000 and 2,000 Hertz (Hz) in the left ear, and 15, 10 and 25 decibels at 500, 1,000 and 2,000 Hz in the right ear. A July 25, 1988 audiogram showed responses of 45, 50 and 60 decibels at 500, 1,000 and 2,000 Hz in the left ear, and 15, 5 and 30 decibels at 500, 1,000 and 2,000 Hz in the right ear. An undated audiometric record reflected monaural and binaural hearing impairment as follows: on February 14, 1979 and May 3, 1982 she had a 23 percent loss in the left ear and a 0 percent loss in the right ear; on July 25, 1988 she had a 43 percent loss in the left ear and a 0 percent loss in the right ear. The record also contains a May 15, 1978 employment application, receipts for doctors' visits and unsigned records of medical examinations.

The Office forwarded appellant's file to the district medical adviser for an opinion as to whether appellant had a work-related hearing loss. On May 2, 2008 the medical adviser stated that, during her federal employment, appellant experienced a worsening of hearing for all frequencies in the left ear only, with no worsening in the right ear. He indicated that the pattern of change exhibited was not typical of a noise-induced hearing loss.

The Office referred appellant, together with a copy of her medical record and a statement of accepted facts, to Dr. Howard M. Goldberg, a Board-certified otolaryngologist, for a determination as to whether appellant had a hearing loss that was caused by employment-related noise exposure. In a June 3, 2008 report, Dr. Goldberg opined that appellant's hearing loss was not related to the accepted noise exposure in her federal employment. A review of sequential audiograms conducted during appellant's federal employment reflected a worsening of the conductive component in the left ear; whereas, the right ear was stable. Dr. Goldberg's physical examination of appellant was within normal limits, and revealed that tympanic membranes and canals were clear. He indicated that appellant did not show a sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. Dr. Goldberg diagnosed progressive (conductive) hearing loss in the left ear only, which he stated is not indicative of a noise-induced hearing loss.<sup>1</sup>

By decision dated July 21, 2008, the Office accepted that appellant had filed a timely claim and that she had been exposed to noise during her federal employment. However, it

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<sup>1</sup> A June 3, 2008 audiogram, performed by Aaron Johnson, an audiologist, accompanied Dr. Goldberg's report. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 30, 30, 45 and 40, respectively, and in the left ear decibel losses of 70, 70, 70 and 85, respectively.

denied her claim, on the grounds that the medical evidence failed to establish that her hearing loss was causally related to established work-related noise exposure.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of 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 the 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. 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>2</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) 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 a claimant. The medical evidence required to establish causal relationship is generally rationalized medical opinion 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 claimant'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.<sup>3</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment, nor the belief that the condition was caused, precipitated or aggravated by his employment, is sufficient to establish a causal relationship.<sup>4</sup> The mere fact that a disease or condition manifests itself or worsens during a period of employment,<sup>5</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>6</sup> does not raise an inference of causal relation between the condition and the employment factors.

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Robert G. Morris*, 48 ECAB 238-39 (1996).

<sup>5</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>6</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

## ANALYSIS

It is not disputed that appellant was exposed to work-related noise from 1979 to 1989. However, the weight of the medical evidence does not establish that her claimed hearing loss is causally related to her employment-related noise exposure.

Appellant submitted various audiogram results, which were either unsigned or bore illegible signatures, reflecting bilateral hearing loss. However, none of the audiograms were accompanied by a physician's discussion of the employment factors believed to have caused or contributed to appellant's hearing loss. Thus, these reports from audiologists do not constitute probative medical evidence.<sup>7</sup> The other medical evidence submitted by appellant does not contain any opinion as to the cause of her hearing loss and is of diminished probative value. This evidence is insufficient to establish appellant's claim.<sup>8</sup>

Dr. Goldberg examined appellant and reviewed the entire medical record, including sequential audiograms conducted during appellant's federal employment, and the June 3, 2008 audiogram. He provided examination findings and diagnosed progressive (conductive) hearing loss in the left ear only, noting that the right ear was stable. Dr. Goldberg explained that the hearing loss pattern was not suggestive of noise-induced hearing loss. He also indicated that appellant did not show a sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. Based upon his review of the record and examination of appellant, Dr. Goldberg opined that appellant's hearing loss was not causally related to noise exposure during her federal employment.

On May 2, 2008 the medical adviser stated that, during her federal employment, appellant experienced a worsening of hearing for all frequencies in the left ear only, with no worsening in the right ear, and indicated that the pattern of change exhibited was not typical of noise-induced hearing loss. His opinion does not support appellant's claim that her hearing loss was caused by factors of her employment.

The Board finds that the medical evidence does not establish that appellant's hearing loss was employment related. Dr. Goldberg provided a reasoned medical opinion that appellant's hearing loss was not related to occupational noise exposure. Because there is no medical evidence of record establishing that appellant's hearing loss was causally related to factors of employment, the Board finds that she has failed to meet her burden of proof.

## CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that she developed a hearing loss in the performance of duty.

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<sup>7</sup> See 5 U.S.C. § 8101(2). This subsection defines the term physician. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician); *Herman L. Henson*, 40 ECAB 341 (1988) (an audiologist is not considered a physician under the Act). See also *Robert E. Cullison*, 55 ECAB 570 (2004) (the Office does not have to review every uncertified audiogram, which has not been prepared in connection with an examination by a medical specialist).

<sup>8</sup> See *Mary E. Marshall*, 56 ECAB 420, 427 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 21, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 24, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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