United States Department of Labor
Employees' Compensation Appeals Board

M.W., Appellant	)	
and	)	**Docket No. 10-992**
	)	**Issued: December 9, 2010**
DEPARTMENT OF THE ARMY, ARMY DEPOT, Anniston AL, 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
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 5, 2010 appellant filed a timely appeal from a January 11, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

FACTUAL HISTORY

On May 7, 2009 appellant, then a 44-year-old heavy mobile equipment repairer supervisor, filed an occupational disease claim alleging that he sustained gradual hearing loss in his right ear over the previous eight years as a result of entering noisy shops. He first realized that his condition was employment related on April 3, 2006. Appellant did not stop working.

In a May 11, 2009 letter, the Office informed appellant that his claim form was insufficient to establish his claim and advised him of the evidence needed to establish his claim.

In an April 27, 2009 statement, appellant asserted that he had worn earplugs since September 2001 and that he was never examined by a private physician for hearing problems. He attached various documents and employment records, including a summary detailing appellant's exposure history to workplace noise above 85 decibels (dBA), eight-hour time-weighted average (TWA) since September 2001. Between September 2001 and May 2004, appellant was exposed to such noise 63 percent of his workdays. For the periods August to October 2004 and August to November 2005, he was exposed 21 percent of his workdays. For all other intervals, appellant was not exposed to noise above 85-dBA TWA. His predicted noise-induced hearing loss was zero dBA. Also submitted were the employing establishments audiometric results from 2001 to 2006.

In a May 7, 2009 report, Dr. Ting J. Tai, an employing establishment physician Board-certified in occupational medicine, reviewed appellant's records and opined that appellant's loss was not noise induced. Noting that unprotected employee exposure to an 85-dBA TWA for 100 percent of the workday for 40 years was expected to bring about a maximum loss of 1 or 2 dBA in the Office's compensable range, she pointed out that appellant's history suggested that he was exposed to such noise between zero and 63 percent of his workdays for less than eight years and that appellant wore hearing protection since 2001, which would have further reduced the noise levels at the inner ear where damage was done by at least 10 dBA. Dr. Tai also observed that appellant's hearing loss was unilateral, whereas noise-induced damaged normally affected both ears, and did not worsen since his 2001 audiometric test, signifying a preexisting condition.

By decision dated June 29, 2009, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his hearing loss resulted from work-related exposure.

Appellant requested an oral hearing on July 21, 2009.

By decision dated September 25, 2009, an Office hearing representative determined that appellant's case was not in posture for an oral hearing because the Office did not refer appellant for a medical examination in accordance with its procedures.[1] The hearing representative vacated the June 29, 2009 decision and remanded the case for further medical development.

In an October 6, 2009 letter, the Office referred appellant and a statement of accepted facts, to Dr. Robert Hurlbutt, a Board-certified otolaryngologist, for a second opinion to determine the relationship between his claimed condition and employment factors.

In a December 1, 2009 report, Dr. Hurlbutt noted examining appellant and found that his external ear anatomy appeared normal. Appellant's audiometric test results revealed that, while appellant's left ear had normal hearing sensitivity and a speech reception threshold (SRT) of 10 dBA, his right ear had mild to moderate loss at mid frequencies and an SRT of 55 dBA. Dr. Hurlbutt reviewed appellant's records and the statement of accepted facts. He noted that appellant's unilateral hearing loss predated his federal employment and did not progress significantly since his hiring in 2001, although appellant was exposed to "potentially hazardous

[1] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Occupational Illness*, Chapter 2.806.5(a)(3) (September 2010).

noise" between September 2001 and May 2004. Dr. Hurlbutt diagnosed appellant as having right sensorineural hearing loss but opined that the condition was unrelated to workplace noise exposure since its onset occurred before appellant was hired by the employing establishment and it remained steady throughout his employment. In a December 23, 2009 addendum, he noted that a December 15, 2009 magnetic resonance imaging (MRI) scan of appellant's head and internal auditory canals did not reveal any internal auditory canal or cerebral pontine angle cause for appellant's asymmetric hearing loss.[2]

By decision dated January 11, 2010, the Office denied appellant's claim on the grounds that the weight of the medical evidence did not establish a causal relationship between his hearing loss and work-related exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[4] 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.[5]

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.[6] To establish fact of injury in an occupational disease claim, 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.[7]

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment

[2] The record also contains the December 15, 2009 MRI scan report from Dr. Gary Morgan, a Board-certified diagnostic radiologist, who found no acute intracranial abnormality.

[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[6] *See S.P.*, 59 ECAB 184 (2007).

[7] *See R.R.*, 60 ECAB ___ n.12 (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

factors. The opinion of the physician must be based on a complete factual and medical background, 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.[8]

ANALYSIS

The evidence supports that appellant was exposed to noise at work over several years. However, the medical evidence does not establish that his diagnosed hearing loss was attributable to his workplace noise exposure.

The Office referred appellant to Dr. Hurlbutt for an opinion on the cause of his hearing loss. After reviewing appellant's prior records, the statement of accepted facts, audiological findings, and physical examination, Dr. Hurlbutt diagnosed right sensorineural hearing loss but opined that it was not caused by appellant's accepted workplace noise exposure. He noted that appellant's hearing loss was sustained before he was hired by the employing establishment in 2001 and that testing did not show that the condition had worsened, even though appellant was exposed to "hazardous" noise for three years. Dr. Hurlbutt also referred appellant for a December 15, 2009 MRI scan of the head. This testing did not reveal any intracranial abnormality. Dr. Hurlbutt reviewed the diagnostic study and did not find any basis on which to attribute the hearing loss to appellant's workplace noise exposure.

In a May 7, 2009 report, Dr. Tai opined that appellant's hearing loss was a preexisting, preemployment condition that remained largely unchanged for eight years. She noted that appellant had a limited history of high-intensity noise exposure and advised that the asymmetric nature of the hearing loss was a trait not normally associated with noise-induced damage.

The Board finds that the medical evidence provides no support that appellant's hearing loss was work related. Drs. Hurlbutt and Tai both found that the hearing loss was not caused by his workplace noise exposure. Appellant did not provide sufficient medical opinion evidence supporting that his hearing loss was caused or aggravated by workplace noise exposure. Accordingly, the Board finds that the Office's January 11, 2010 decision properly denied the claim.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an occupational disease in the performance of duty.

[8] *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 5 at 352.

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 9, 2010
Washington, DC

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

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

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