

**United States Department of Labor
Employees' Compensation Appeals Board**

P.P., Appellant

and

**DEPARTMENT OF THE ARMY, PUBLIC
WORKS, FORT SAM HOUSTON, TX, Employer**

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**Docket No. 09-1363
Issued: January 8, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 27, 2009 appellant filed a timely appeal from a February 4, 2009 decision of the Office of Workers' Compensation Programs adjudicating his schedule award 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 has increased hearing loss as a result of noise exposure during his federal employment.

FACTUAL HISTORY

On October 19, 2007 appellant, then a 72-year-old retired mechanic, filed a recurrence of disability claim alleging increased hearing loss causally related to his federal employment. He previously filed a separate hearing loss claim on October 16, 2000. Under that claim, the Office accepted a work-related binaural hearing loss. On June 23, 2001 it granted a schedule award based on nine percent monaural hearing loss in the right ear. Appellant was last exposed to hazardous noise during his federal employment in December 1994 when he retired. Between

2002 and 2006 he worked at the employing establishment as an employee of a private contractor. On November 1, 2007 the Office adjudicated appellant's recurrence claim to a claim for a new occupational disease.

By letter dated November 7, 2007, the Office asked appellant to provide additional information, including a detailed employment history, a history of his noise exposure at work and medical reports. On November 21, 2007 appellant responded that he noticed his hearing loss prior to his 1994 retirement.

In a January 16, 2008 report, Dr. William Carl Smith, a Board-certified otolaryngologist and an Office referral physician, provided the results of a physical examination and audiometric testing. He indicated that appellant had severe bilateral sensorineural high frequency hearing loss, a loss in excess of what would normally be due to presbycusis, age-related hearing loss. Audiometric testing revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second: right ear decibel losses of 30, 60, 65 and 80; left ear decibel losses of 25, 20, 35 and 50. Dr. Smith stated that the earliest audiogram available for his review, dated April 22, 1970, revealed a very mild high frequency hearing loss, worse in the right ear. His hearing loss had worsened when he retired in 1994 and again after his return to work in 2002.¹ Dr. Smith opined that appellant's hearing loss was due, in part, to noise exposure in his federal employment. His hearing had markedly decreased over the interval in which he returned to work, 2002 to 2006.

In a January 31, 2008 report, an Office medical adviser calculated appellant's hearing loss. He totaled the decibel losses of 25, 20, 35 and 50 in the left ear for the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second at 130 decibels and divided by 4 to obtain the average hearing loss of 32.5 decibels. This average was then reduced by 25 decibels to equal 7.5 decibels and multiplied by the established factor of 1.5 to compute 11.25 percent impairment in the left ear, rounded to 11.3 percent. The Office medical adviser totaled the losses of 30, 60, 65 and 80 in the right ear at 235 decibels and divided by 4 to obtain the average hearing loss of 58.75 decibels. This average was then reduced by 25 decibels to equal 33.75, rounded to 33.8, which was multiplied by the established factor of 1.5 to compute 50.7 percent monaural hearing loss in the right ear.² The Office medical adviser calculated 18 percent binaural hearing loss. He indicated that appellant was entitled to a schedule award for additional binaural hearing loss only if it was related to noise exposure during federal employment.

By decision dated April 8, 2008, the Office denied appellant's claim on the grounds that the evidence did not establish that his hearing loss after his retirement from the employing establishment in December 1994 occurred in the performance of duty. Following his retirement, appellant was no longer exposed to industrial noise as a federal employee. He requested

¹ As noted, appellant worked at the employing establishment as an employee of a private contractor from 2002 to 2006.

² See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (October 2005) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

reconsideration. Appellant stated that his hearing continued to worsen after he retired from his federal employment.

By decision dated February 4, 2009, the Office denied modification of the April 8, 2008 decision. It found that any hearing loss that occurred between 2002 and 2006 was not compensable because appellant was employed by a private contractor, not as a federal employee.

LEGAL PRECEDENT

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.³

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.⁴

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.⁵

ANALYSIS

Dr. Smith provided the results of a physical examination and audiometric testing. He indicated that appellant had severe bilateral sensorineural high frequency hearing loss, a loss in excess of what would normally be caused by presbycusis, age-related hearing loss. Audiometric testing performed on January 16, 2008 revealed, at the frequency levels of 500, 1,000, 2,000 and 3,000 cycles per second: right ear decibel losses of 30, 60, 65 and 80; left ear decibel losses of 25, 20, 35 and 50. Dr. Smith stated that the earliest audiogram available for his review, dated April 22, 1970, showed a very mild high frequency hearing loss, worse in the right ear. His hearing loss had worsened when he retired in 1994 and again after his return to work in 2002. Dr. Smith opined that appellant's hearing loss was due, in part, to noise exposure in his federal

³ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

⁴ *I.J.*, 59 ECAB ____ (Docket No. 07-2362, issued March 11, 2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *D.I.*, 59 ECAB ____ (Docket No. 07-1534, issued November 6, 2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

employment. His hearing had markedly decreased over the interval in which he returned to work, 2002 to 2006. The Office medical adviser noted that appellant was entitled to a schedule award for additional binaural hearing loss only if it was related to noise exposure during federal employment. Although an employee may apply for an additional schedule award for increased hearing loss after exposure to hazardous noise during federal employment has ceased, there must be rationalized medical evidence establishing that such increased hearing loss is causally related to his federal employment.⁶ In appellant's case, Dr. Smith opined that his increased hearing loss was caused by his industrial noise exposure between 2002 and 2006 when he was not working as a federal employee. There is no medical evidence establishing that appellant's hearing loss would have worsened without the new noise exposure from 2002 to 2006 when he was not a federal employee.

The Board finds that the medical evidence from Dr. Smith establishes that appellant's hearing loss was not caused or contributed to by his noise exposure during his federal employment. The evidence establishes that his increased hearing loss occurred as a result of industrial noise exposure between 2002 and 2006 when he was not a federal employee. The Office properly denied his hearing loss claim.

Appellant contends on appeal that his hearing continued to worsen following his December 1994 retirement and is causally related to his federal employment. As noted, however, causal relationship is a medical issue and must be established by rationalized medical evidence. The medical evidence establishes that appellant sustained increased hearing loss during 2002 to 2006 when exposed to noise as a private contractor, not as a federal employee. Appellant's belief that his condition was aggravated by his employment is not sufficient to establish causal relationship.

CONCLUSION

The Board finds that the evidence establishes that appellant's increased hearing loss was not causally related to his federal employment.

⁶ See *Adelbert E. Buzzell*, 34 ECAB 96 (1982).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 4, 2009 and April 8, 2008 are affirmed.

Issued: January 8, 2010
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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