

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

R.S., Appellant	)	
	)	
and	)	Docket No. 09-2327
	)	Issued: July 19, 2010
DEPARTMENT OF THE ARMY, ARMY	)	
CORPS OF ENGINEERS, ENSLEY	)	
ENGINEERING YARD, Memphis, TN, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 21, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated July 2, 2009 which denied a schedule award. 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 the Office properly denied appellant's claim for a schedule award for hearing loss.

**FACTUAL HISTORY**

On December 6, 2008 appellant, then a 55-year-old seasonal engineering equipment operator, filed a claim for compensation alleging that he developed hearing loss due to his federal employment. He became aware of his hearing loss and realized it was causally related to his employment in June 2005. Appellant did not stop work.

By letter dated February 25, 2009, the Office advised appellant of the evidence needed to establish his claim. It also requested the employing establishment address, the sources of appellant's noise exposure, decibel and frequency levels, periods of exposure and any hearing protection provided.

The Office conducted a telephone conference with appellant regarding his work history. From March 17, 1974 to September 27, 1998, appellant worked as a seasonal revetment worker and was exposed to hazardous noise from tractors and air hammers for 10 to 12 hours per day and was provided hearing protection. He noted that, from September 28, 1998 to February 23, 2002, he was employed as a seasonal grading equipment operator and was exposed to hazardous noise from tractors and machines for 10 to 12 hours per day and was provided hearing protection. From December 24, 2002 to November 24, 2008 and from December 12, 2008 to the present, appellant was employed as a seasonal engineering equipment operator and exposed to hazardous noise from hammers, cranes, generators and winches for 10 to 12 hours per day and was not provided hearing protection.

Appellant submitted employing establishment audiograms dated from August 12, 1976 to January 6, 2009. Also submitted were reports dated May 2, 2006 and April 28, 2009 from an employing establishment physician who noted a mild high frequency hearing loss in the left ear with a threshold shift.

By letter dated May 8, 2009, the Office referred appellant to Dr. Mary McCalla, a Board-certified otolaryngologist, for otologic examination and audiological evaluation. It provided Dr. McCalla with a statement of accepted facts, available exposure information and copies of the medical reports and audiograms.

Dr. McCalla performed an otologic evaluation of appellant on June 17, 2009 and audiometric testing was conducted on her behalf that day. Testing at the frequency levels of 500, 1,000, 2,000 and 3,000 revealed the following: right ear 25, 25, 15 and 30 decibels; left ear 25, 15, 20 and 40 decibels. In a report dated June 17, 2009, she diagnosed mild sensorineural hearing loss of the left ear at 3,000 Hz and mild sensorineural hearing loss of the right ear at 3000 Hz through 6,000 Hz. Dr. McCalla noted fair to poor reliability of the audiogram and opined that she could not relate the sensorineural hearing loss to appellant's employment. She noted a marked audiometric discrepancy between each ear and opined that there was a possibility that the pure tones were slightly better bilaterally than appellant responded during testing. Dr. McCalla advised that, from baseline in 1976 to the present, appellant experienced a standard threshold shift bilaterally; however, he communicated at an acceptable level at 1,000, 2,000 and 4,000 Hz. She concluded that appellant's audiometric results indicated a change greater than his age-related changes; however, the reliability of the audiogram was only considered fair. Dr. McCalla noted that physical examination of the canals and eardrums revealed normal tympanic membranes bilaterally, external auditory canals were firm and pink and drum motility for the left ear revealed normal middle ear functioning and for the right ear, slightly hypermobile movement of the tympanic membrane. She recommended appellant continue to wear hearing protection and undergo annual hearing evaluation.

By decision dated July 2, 2009, the Office denied appellant's claim on the grounds that the medical evidence did not support that he sustained a hearing loss related to workplace noise exposure.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 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>1</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 the 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>2</sup>

## ANALYSIS

The record reflects that appellant was exposed to noise from 1974 to the present in the course of his federal employment. The medical evidence, however, is insufficient to establish that he sustained hearing loss causally related to his workplace noise exposure. Appellant did not submit any medical report from an attending physician addressing how his employment related noise exposure caused or aggravated any hearing loss. The employer's audiograms dated August 12, 1976 to April 28, 2009 indicated only the possibility that appellant sustained mild high frequency hearing loss in the left ear. The audiograms noted the tympanogram was normal. None of the audiograms were accompanied by a physician's opinion addressing the accepted noise exposure or how it contributed to any hearing loss.

On May 8, 2009 the Office referred appellant to Dr. McCalla. On June 17, 2009 Dr. McCalla determined that appellant's sensorineural hearing loss was not due to his employment history of noise exposure. She diagnosed mild sensorineural hearing loss of the left ear at 3,000 Hz and mild sensorineural hearing loss of the right ear at 3,000 Hz through 6,000

---

<sup>1</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>2</sup> Solomon Polen, 51 ECAB 341 (2000).

Hz. Dr. McCalla noted fair to poor reliability of the audiogram obtained and opined that she could not relate the sensorineural hearing loss to appellant's employment. She noted marked audiometric discrepancy between each ear and opined that there was a possibility that the pure tones were slightly better bilaterally than appellant responded during testing. Dr. McCalla advised that from baseline in 1976 to the present appellant experienced a standard threshold shift bilaterally and that his audiometric results indicated a change greater than his age-related changes; however, the reliability of the audiogram was only considered fair. She noted that physical examination of the canals and eardrums revealed no abnormalities.

The Board finds that the medical evidence does not support that appellant sustained an employment-related hearing loss. Dr. McCalla provided a thorough examination and a reasoned opinion explaining how the findings on examination and testing were not due to the noise in appellant's employment. The Board finds that Dr. McCalla's report represents the weight of the evidence. Appellant has not submitted any medical opinion evidence to support that his hearing loss is employment related.

**CONCLUSION**

The Board finds appellant did not meet his burden of proof to establish that his claimed hearing loss is causally related to the accepted employment factors.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2010  
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