United States Department of Labor
Employees' Compensation Appeals Board

S.T., Appellant	)	
and	)	**Docket No. 10-257**
	)	**Issued: July 21, 2010**
TENNESSEE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur, AL, 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 November 2, 2009 appellant filed a timely appeal of the Office of Workers' Compensation Programs' August 4, 2009 decision denying his hearing loss claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

FACTUAL HISTORY

On April 24, 2009 appellant, a 62-year-old retired quality assurance evaluator, filed an occupational disease claim alleging that he sustained bilateral hearing loss as a result of work-related noise exposure. He last worked at the employing establishment on August 1, 1988 and first realized that his hearing loss was employment related on April 20, 2009.

In a letter dated May 8, 2009, the Office informed appellant that the information submitted was insufficient to establish his claim. It requested details regarding the nature and duration of his employment-related noise exposure. The Office advised him to submit medical evidence establishing that he had sustained a hearing loss that was causally related to the claimed work-related noise exposure. It requested information from the employing establishment, including details regarding appellant's exposure to noise and reports of hearing tests performed during the course of his employment.

Appellant submitted audiologist reports for the period May 6, 1970 through May 27, 2009, which were either unsigned or bore illegible signatures. An April 20, 2009 audiogram performed at Beltone Hearing Facility reflected a mild-to-moderate hearing loss.

In a May 27, 2009 statement, appellant indicated that from 1967 to 1979 he worked in a steam plant, where he tested gas turbines and was exposed to loud noise eight hours per day and wore no ear protection. From 1979 to 1988, he was exposed to noise while surveying all areas of the plant in his position as quality assurance engineer.

A June 17, 2009 statement of accepted facts noted that appellant worked in a loud industrial environment from 1967 to 1979. From 1979 to 1988, he worked as a quality assurance engineer and was exposed to noises that came from gas turbines, boiler pumps, heavy equipment, power drills and other plant noises from 8 to 12 hours per days, five days per week. Appellant was not provided any hearing protection while working.

The Office referred appellant, together with a copy of his medical record and the statement of accepted facts, to Dr. George Godwin, a Board-certified otolaryngologist, for a determination as to whether his hearing loss was caused by employment-related noise exposure. In a July 14, 2009 report, Dr. Godwin diagnosed bilateral neurosensory hearing loss, based upon a current audiogram. Canals, drums, drum mobility and fork test results were normal. Dr. Godwin stated that appellant had normal hearing at the beginning of his work-related noise exposure. Appellant's workplace exposure, however, was insufficient as to intensity and duration to have caused his hearing loss. Further, he did not exhibit sensorineural loss in excess of what would normally be predicted on the basis of presbycusis. Dr. Godwin opined that appellant's hearing loss was not due to employment-related noise exposure. Noting that there was no significant threshold shift of either ear during appellant's federal employment noise exposure, he concluded that the hearing loss occurred after 1988, when appellant's employment-related noise exposure ended.

Appellant submitted personnel records for the period March 22, 1978 to August 1, 1988. On July 27, 2009 the employing establishment controverted the claim, contending that any hearing loss sustained by appellant was not causally related to his federal employment, which ended in 1988.

By decision dated August 4, 2009, the Office denied appellant's claim on the grounds that the medical evidence failed to establish that his hearing loss was causally related to established noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his 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.[1]

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 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.[2]

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.[3] The mere fact that a disease or condition manifests itself or worsens during a period of employment[4] or that work activities produce symptoms revelatory of an underlying condition[5] does not raise an inference of causal relation between the condition and the employment factors.

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[1] *Gary J. Watling*, 52 ECAB 357 (2001).

[2] *Solomon Polen*, 51 ECAB 341 (2000).

[3] *Robert G. Morris*, 48 ECAB 238-39 (1996).

[4] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[5] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

ANALYSIS

It is not disputed that appellant was exposed to work-related noise from 1967 to 1979. However, the weight of the medical evidence does not establish that his hearing loss is causally related to his employment-related noise exposure.

Appellant submitted various audiogram results, which were either unsigned or bore illegible signatures, reflecting bilateral hearing loss. 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. These reports do not constitute probative medical evidence.[6]

The Office's second opinion physician examined appellant and reviewed the statement of accepted facts and the entire medical record, including a July 14, 2009 audiogram. Dr. Godwin diagnosed bilateral neurosensory hearing loss, which he found was not due to employment-related noise exposure. He stated that appellant did not exhibit sensorineural loss in excess of what would normally be predicted on the basis of presbycusis and that his workplace exposure was insufficient as to intensity and duration to have caused his hearing loss. Noting that there was no significant threshold shift in either ear during his federal employment noise exposure, Dr. Godwin concluded that the hearing loss occurred after 1988, when his employment-related noise exposure ended. The Board finds that Dr. Godwin's well-reasoned report constitutes the weight of medical the evidence and does not establish appellant's claim.

The medical evidence of record does not establish that appellant's hearing loss was causally related to factors of his federal employment. The Board finds that he has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant did not met his burden of proof to establish that he developed bilateral hearing loss in the performance of duty.

[6] *See* 5 U.S.C. § 8101(2). This subsection defines the term physician. *See 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 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).

ORDER

IT IS HEREBY ORDERED THAT the August 4, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 21, 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