

Appellant submitted a statement noting that he worked for the employing establishment since January 1980, both as an aircraft mechanic and as a quality assurance specialist. He was exposed to hydraulic machines and other loud engine noises daily, did not engage in hobbies involving loud noise and “failed” his hearing tests “for the last eight years.” Appellant and the employing establishment submitted audiometric results, audiology reports and consultation sheets for the period February 26, 1988 through June 5, 2009. A July 6, 1993 audiology report noted that appellant’s audiometry results were inconsistent and “fair to poor” in terms of reliability. An August 9, 1993 report indicated that a retest showed apparent conductive hearing loss with no evidence of occupationally-related loss.

In a July 6, 2009 letter, the Office notified appellant that the evidence submitted was insufficient to establish his claim. It advised him of the evidence needed to establish his claim. In response, appellant submitted personal qualifications statements.

A November 5, 2009 statement of accepted facts advised that appellant was employed by the Coast Guard as an aviation structural mechanic between 1972 and 1978 and by the employing establishment as an aircraft mechanic between 1980 and 1985 and a quality assurance inspector for aircraft since then. It was accepted that appellant was exposed to occupational noise levels above 85 decibels (dBA) during these periods.

In a November 6, 2009 letter, the Office referred appellant for a second opinion to Dr. Theodore Mazer, Board-certified in otolaryngology, to determine the relationship between his condition and employment factors.

In a December 22, 2009 report, Dr. Mazer noted examining appellant on December 4, 2009 after he had undergone audiometric testing. Appellant complained of progressive hearing difficulty and tinnitus that he attributed to occupational noise exposure. He denied any other noise exposure or any prior head or ear injuries. In reviewing appellant’s audiometric records, Dr. Mazer observed that appellant had no signs of noise-induced loss eight years into his work based on a 1988 audiogram, and had little change despite ongoing noise exposure through 1992. Appellant showed hearing loss at all frequencies based on pure tone air conduction testing in 1993 that was not typical of noise-induced loss. Dr. Mazer noted that the July 6, 1993 audiological report showed what appeared to be conductive hearing loss or inconsistent results with the reliability of the hearing test being fair to poor. An August 9, 1993 retest also showed apparent conductive loss with no evidence of noise-induced loss. Dr. Mazer pointed out that subsequent tests actually showed some improvement in hearing such that there was no overall worsening from 1996 to 2005, which would not suggest noise-induced damage. Appellant’s hearing declined again at the lower frequencies after 2006, but showed some recovery in the 2009 audiometry results. Dr. Mazer observed that this suggested conductive, fluctuating hearing loss as opposed to noise-induced hearing loss because the latter involved nerve damage not expected to improve at any time. He advised that results of the December 4, 2009 audiogram showed moderate-to-severe bilateral mixed hearing loss in a pattern more consistent with otosclerosis than noise-induced hearing loss. Appellant’s speech reception threshold, 35 dBA right and 20 dBA left, was “grossly inconsistent” with the results of appellant’s pure tone air conduction testing and was “better than predicted even by the reported bone conduction testing.” Dr. Mazer stated that middle ear dysfunction was “likely the main contributor to hearing loss with possible exaggerated response as noted by SRT [speech reception threshold] levels.” He

concluded that the test results, “combined with stable hearing with 20 years of noise exposure, followed by a pattern of declining hearing in the lower frequencies as opposed to a noise notch pattern, along with some question of inconsistent testing and SRT scores far better than pure tone average on air conduction testing on at least two tests, accompanied by clearly existent low frequency conductive hearing loss” signified progressive middle ear disease beginning in the early 1990s. Dr. Mazer advised that noise-induced hearing loss or tinnitus was highly improbable in light of “the time course and pattern of impairment, particularly noted in the obvious conductive loss, absence of loss for 20 years of exposure, and absence of any noise notch pattern at any time.”

By decision dated January 7, 2010, the Office denied appellant’s claim on the grounds that the medical evidence failed to establish that his hearing loss was causally related to work-related noise exposure.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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.² 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.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ 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.⁵

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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See S.P.*, 59 ECAB 184 (2007).

⁵ *See R.R.*, 60 ECAB ___ n.12 (Docket No. 08-2010, issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

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.⁶

ANALYSIS

The evidence supports that appellant was exposed to employment-related noise since January 1980. The Board finds that the weight of the medical evidence does not establish that his hearing loss was causally related to his workplace noise exposure.

The Office referred appellant to Dr. Mazer for an opinion on the cause of appellant's hearing loss. In a December 22, 2009 report, Dr. Mazer reviewed the statement of accepted facts, noted appellant's history, reviewed the medical and audiological evidence, stated results from the December 4, 2009 audiogram and presented examination findings. He observed that appellant initially had stable hearing for 20 years after noise exposure began. This was followed by a pattern of declining hearing in the lower frequencies as indicated by the absence of noise notches, SRT scores exceeding the pure tone average on air conduction testing and clearly existent low frequency conductive hearing loss. Dr. Mazer concluded that progressive middle ear disease was the likely cause of appellant's condition. He ruled out occupational noise exposure as a possible source, explaining that it was highly improbable given appellant's stable hearing for the first 20 years of noise exposure, the absence of a noise notch pattern, the obvious conductive loss, and even some hearing improvement in later years. Dr. Mazer explained that these patterns were inconsistent with a noise-induced hearing loss. He found no basis on which to attribute appellant's hearing loss to the accepted history of workplace noise exposure.

The Board finds that Dr. Mazer's well-reasoned report constitutes the weight of the medical evidence. Dr. Mazer fully explained the reasons for his opinion referencing current and previous audiometric test results. Appellant has not submitted any medical opinion evidence supporting that his hearing loss was caused or aggravated by his workplace noise exposure. Accordingly, the Board finds that the Office's January 7, 2010 decision properly denied the claim.

On appeal, appellant asserts that he has worked around jets since 1973 and repeatedly failed hearing tests. He argues that his hearing loss occurred on the job and that he would not have filed an occupational disease claim if it did not. However, neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish a causal relationship.⁷ Appellant also questioned Dr. Mazer's fairness and asserted that he should have selected a physician for his examination. The Board has held that the choice of a second opinion physician rests with the Office.⁸ Although appellant objected to the physician conducting the

⁶ *I.J.*, 59 ECAB 408 (2008); *Woodhams*, *supra* note 3 at 352.

⁷ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁸ *See Edward Burton Lee*, 53 ECAB 183, 188 (2001).

second opinion examination, he has not submitted any evidence to establish bias on the part of Dr. Mazer.⁹

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.

ORDER

IT IS HEREBY ORDERED THAT the January 7, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 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

⁹ The Board notes that appellant submitted new evidence on appeal. The Board may not consider this evidence as its review is limited to the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c)(1).