

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

J.D., Appellant

and

**DEPARTMENT OF THE ARMY, ANNISTON
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 10-957
Issued: November 2, 2010**

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 February 23, 2010 appellant filed a timely appeal from the October 19, 2009 decision of the Office of Workers' Compensation Programs denying his claim for hearing loss. 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 met his burden of proof to establish that his bilateral hearing loss was causally related to factors of his employment.

FACTUAL HISTORY

On April 17, 2009 appellant, then a 58-year-old heavy mobile mechanic inspector, filed an occupational disease claim alleging that his bilateral hearing loss was due to noise exposure at work. The record reflects exposure to hammer chisels, impact wrenches, test cell equipment for transmission, ground hop engines, test engines in tanks, generator test equipment and combat vehicle noise.

In an August 13, 2009 report, Dr. Beatrice Smith, a Board-certified otolaryngologist, reviewed the medical evidence and provided the results of audiometric testing. She diagnosed bilateral high frequency hearing loss that was not caused by noise exposure in appellant's federal employment. Audiometric test results from 2001 to 2009 did not show a standard threshold shift and appellant was not exposed to sufficient noise to cause hearing loss in his federal job. Dr. Smith noted that appellant was not exposed to noise at or above 85 decibels with a time-weighted average of 75 decibels. He was not required to use hearing protection unless "someone was beating on equipment or there was a loud motor running." In these situations, appellant wore hearing protection. The earliest audiogram available, dated October 9, 2001, showed normal hearing sensitivity through 2000 hertz bilaterally with a mild high frequency loss. Audiograms from 2003 to 2005 were essentially the same as the 2001 test but the December 28, 2005 test revealed a decrease in sensitivity in both ears. An audiogram obtained a week later, on January 3, 2006, showed improvement. The last audiogram from the employing establishment, dated January 9, 2009, was essentially the same as the 2006 test. The August 13, 2009 audiometric testing performed for Dr. Smith did not show a standard threshold shift in either ear in excess of hearing loss caused by the normal aging process.

On October 6, 2009 an Office medical adviser reviewed the record and reported that Dr. Smith found that appellant's bilateral sensorineural hearing loss was not caused by his federal employment.

By decision dated October 19, 2009, the Office denied appellant's claim for bilateral hearing loss on the grounds that the evidence did not establish causal relationship.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in a claim for an occupational disease claim, an employee must submit the following: (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.¹ 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.²

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

¹ See *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

² *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

employment, nor his belief that his condition was aggravated by his employment, is sufficient to establish causal relationship.³

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish that his bilateral hearing loss was causally related to factors of his employment.

Dr. Smith reviewed the medical evidence and provided the results of audiometric testing. She diagnosed bilateral high frequency hearing loss but found it was not due to appellant's history of noise exposure. Audiometric test results from 2001 to 2009 did not show a standard threshold shift and appellant was not exposed to sufficient noise to cause hearing loss in his federal job. Dr. Smith noted that appellant was not exposed to noise at or above 85 decibels with a time-weighted average of 75 decibels. A 2001 audiogram showed normal hearing sensitivity through 2000 hertz bilaterally with a mild high frequency loss. Audiograms from 2003 to 2005 were essentially the same. The January 9, 2009 audiometric study was essentially the same as the 2006 test. Based on Dr. Smith's review of the audiograms of record, she did not find a standard threshold shift in either ear in excess of hearing loss caused by the aging process. Dr. Smith's report is based on a complete and accurate factual and medical background and a review of audiograms from 2001 to 2009. Her report establishes that appellant's bilateral hearing loss was not causally related to his employment.

The Office properly referred Dr. Smith's report to the Office medical adviser, who concurred in the finding that appellant's hearing loss was not employment related. There is no medical evidence of record that supports causal relation.⁴

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish a bilateral hearing loss causally related to factors of his employment.

³ *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

⁴ The question of causal relationship is medical and must be resolved by probative medical evidence. *See S.D.*, 58 ECAB 149 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 19, 2009 is affirmed.

Issued: November 2, 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