

On October 8, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim.

In a September 23, 2008 statement, appellant noted beginning work at the employing establishment in June 1991 at which time he had normal hearing. He had annual physical examinations beginning June 27, 1994 that revealed hearing loss which ranged from moderate to severe. Based on hearing test results dated August 2, 2004, appellant had to undergo a repeat test on October 8, 2004. He stated that, based on physical examinations dated August 22, 2005 and August 22, 2006, the employing establishment determined that he did not meet the employer's hearing standards. Appellant asserted that his hearing loss was a direct result of his federal employment as he had normal hearing when he began his employment in 1991. He indicated that his hearing had been negatively impacted by firearms training and exposure to work-related shootings. The employing establishment submitted several audiograms dated between June 18, 1991 and October 26, 2007.

In an August 2, 2004 report, Dr. Peter Ambrose, Board-certified in occupational medicine, performed appellant's annual physical examination and advised that an audiogram performed that day revealed high-frequency hearing loss in the left ear. He noted this was due to shooting in the past. On October 7, 2004 Dr. Eric Smith, Board-certified in family medicine and associate of Dr. Ambrose, noted that a repeat audiogram showed that appellant's hearing loss was actually greater on the right than left side.

In a December 3, 2004 report, Dr. Martina Kukulja, a Board-certified internist, who reviewed appellant's medical clearance for the employing establishment, stated that appellant's August 2, 2004 audiogram results indicated significant hearing loss in the left ear. She also reviewed an October 8, 2004 repeat audiogram report revealing that the data had been reversed regarding right and left ear findings. Dr. Kukulja indicated that the newest audiogram findings showed moderately severe hearing loss in the right ear and mild hearing loss in the left ear. She noted that the degree of hearing loss progressed such that appellant did not meet the employing establishment's hearing standards. Dr. Kukulja also recommended that appellant consult with an ear, nose and throat physician.

In a February 28, 2005 report, Dr. Thomas Stackhouse, a Board-certified otolaryngologist, found that appellant had continued significant effusion behind his right ear and no signs of infection. He noted that this could be a chronic process and recommended a myringotomy and tube procedure in the right ear.

On August 22, 2005 Dr. Ambrose noted that an audiogram performed that day showed very significant high-frequency hearing loss in the right ear. He also noted fluid behind the right ear. Dr. Ambrose recommended surgery but indicated appellant was not ready and that his hearing was sufficient for normal communication. On August 22, 2006 he noted appellant's report of hearing problems that had been evaluated by an ear, nose and throat physician. Dr. Ambrose noted that appellant opted not to have surgery. He stated that lab work showed significant right-sided hearing loss, which was previously documented. In an October 27, 2007 report, Dr. Ambrose noted that an audiogram performed that day showed very significant high-frequency hearing loss in the right ear. He noted that appellant had this condition for many years. Dr. Ambrose advised appellant to use hearing protection.

In a February 4, 2005 report, Dr. Joost Knops, a Board-certified otolaryngologist, who noted diminished hearing in a prior examination report. Dr. Knops stated that appellant's noise exposure included shooting. Appellant had a history of Eustachian tube dysfunction and had reported numerous instances of ruptured eardrums from ear infections during his childhood and teenage years. More recently, he reported having "plugged ears" frequently. Dr. Knops' right ear examination revealed a tortuous ear canal with an eardrum that was quite restricted and appeared to have fluid behind it. He found limited mobility on insufflation and advised that the left side looked more normal. Dr. Knops stated that an audiogram confirmed normal hearing on the left side with slight noise-induced hearing loss, while the right side had quite significant conductive loss. He also indicated that the tympanogram was flat. Dr. Knops diagnosed right ear mixed hearing loss, left ear sensorineural hearing loss, chronic serous otitis media and Eustachian tube dysfunction. He found that an audiogram performed that day showed very slight sensorineural hearing loss likely present for many years as documented on previous examinations. Dr. Knops further found that appellant had additional conductive loss that was quite significant and that his ears had 40 decibels of hearing loss. He opined that this conductive component was due to fluid and likely the result of longstanding Eustachian tube dysfunction.

In an October 13, 2008 statement, appellant listed his employment history of federal and nonfederal positions as well as the noise exposure at each. In addition to noise in his federal employment, he noted noise exposure while working for a railroad company as a switchman/brakeman during summers from 1972 to 1974 and from June 1976 to April 1977. Appellant was still exposed to hazardous noise at work as he was required to qualify for his position by shooting 150 rounds of ammunition with handguns.

On December 15, 2008 the Office referred appellant, together with a statement of accepted facts, to Dr. Thomas Mueller, a Board-certified otolaryngologist, for a second opinion. In a January 7, 2009 report, Dr. Mueller summarized appellant's history and reviewed the audiograms dated between 1991 and 2006. His examination revealed a slight amount of cerumen in the ears, no tympanic membrane retraction and no obvious middle ear fluid. Dr. Mueller diagnosed right ear mixed hearing loss and left ear hearing within normal limits. He noted that at the beginning of appellant's noise exposure his hearing was within normal range with a noticeable dip in the right side which was still within normal hearing range. Dr. Mueller noted that after comparing the audiograms since the beginning of appellant's noise exposure, the left side had deteriorated slightly but was still within the normal range. He noted that the upper frequencies of the right side had hearing loss but not of a compensable nature. Presently appellant had conductive hearing loss that was not due to noise exposure and should be further evaluated and treated. He opined that workplace exposure was sufficient in intensity and duration to contribute to the sensorineural portion of hearing loss of the right side. Dr. Mueller also opined that there was no evidence of significant sensorineural hearing loss from the audiogram performed that day. In an attached form, he checked a box indicating that appellant's sensorineural hearing loss was "not due" to noise exposure in his federal employment. The record contains a January 7, 2009 audiogram that was performed on Dr. Mueller's behalf.

In a January 28, 2009 decision, the Office denied appellant's claim, finding that the medical evidence did not establish that the claimed medical condition related to the accepted work-related noise exposure.

Appellant requested a review of the written record on February 25, 2009.

In a June 24, 2009 decision, an Office hearing representative vacated the January 28, 2009 decision and remanded the case for further development to seek clarification from Dr. Mueller.

On July 30, 2009 the Office requested a supplemental report from Dr. Mueller clarifying whether appellant had sensorineural hearing loss of the right ear due to workplace noise exposure.

In an August 4, 2009 supplemental report, Dr. Mueller indicated that a correction on the final version of his prior report had not been made. The report should have read that “workplace exposure as described was *not* sufficient as to intensity and duration to have contributed to the sensorineural portion of the hearing loss in question, namely on the right side.” (Emphasis in the original.) Dr. Mueller opined that appellant had no sensorineural hearing loss on his right side due to his federal employment. He reiterated that conductive hearing loss on the right side needed further evaluation.

In an August 18, 2009 report, an Office medical adviser reviewed appellant’s medical record and opined that appellant’s hearing condition was not caused or aggravated by his federal employment. He stated that the most current audiogram of January 7, 2009 showed that appellant’s left ear had normal hearing and that his right ear had normal sensorineural hearing. The Office medical adviser opined that significant conductive hearing loss of the right ear was not related to workplace noise exposure. He also opined that there was no work-related sensorineural hearing loss as appellant’s sensorineural hearing of the right ear was within normal limits. The Office medical adviser advised that noise would not cause conductive losses except for acoustic trauma and that there was nothing in the record to suggest acoustic trauma occurred. Appellant had normal right ear tympanography which indicated that his right ear conductive loss was due to some other disease process.

In an October 1, 2009 decision, the Office denied appellant’s claim finding that the medical evidence did not establish that the claimed medical condition was causally related to the established work-related events.

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 filed within the applicable time limitation; that an injury was sustained while 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 on a traumatic injury or an occupational disease.¹

¹ *J.E.*, 59 ECAB 119 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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) a 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 diagnosed condition is causally related to the employment factors identified by the claimant.²

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion 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.³

ANALYSIS

The record supports that appellant's position as a special agent exposed him to prolonged noise exposure from firearms. However, the medical evidence is insufficient to establish that such noise exposure caused or aggravated his claimed hearing loss.

In a January 7, 2009 report, Dr. Mueller, a second opinion specialist, noted that his physical examination revealed a slight amount of cerumen in the ears, no tympanic membrane retraction and no obvious middle ear fluid. He diagnosed mixed hearing loss of the right ear and normal hearing of the left ear. After reviewing appellant's medical records and the examination findings, Dr. Mueller opined that the right ear had insignificant upper-frequency hearing loss as there was no evidence of significant sensorineural hearing loss based on an audiogram performed that day. He further opined that the conductive hearing loss of the right ear was not due to workplace noise exposure. In an August 4, 2009 supplemental report, Dr. Mueller reiterated that appellant's workplace noise exposure was not sufficient in intensity or duration to have contributed to sensorineural hearing loss. He reiterated his opinion that appellant had no sensorineural hearing loss of the right ear due to work-related noise exposure.

The Board finds that Dr. Mueller's reports represent the weight of the medical evidence and that the Office properly relied on his reports in denying appellant's hearing loss claim. Dr. Mueller's opinion is based on proper factual and medical history and his reports contained a summary of relevant medical evidence. Moreover, he analyzed this information in addition to his own examination findings to reach a reasoned conclusion regarding appellant's condition.⁴

² *D.I.*, 59 ECAB 158 (2007); *Roy L. Humphrey*, 57 ECAB 238 (2005).

³ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *See Naomi Lilly*, 10 ECAB 560 (1959) (the opportunity for and thoroughness of examination, the accuracy and completeness of the doctor's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the doctor's opinion are factors which enter into the weight of an evaluation).

Dr. Mueller found no basis on which to determine that appellant's workplace noise exposure caused or aggravated his hearing loss condition.

The Office medical adviser concurred with Dr. Mueller's opinion that appellant's hearing loss was not caused or aggravated by his federal employment. He supported this determination by noting that appellant's most recent audiogram dated January 7, 2009 showed normal hearing of the left ear and normal sensorineural hearing of the right ear although there was conductive hearing loss. The medical adviser also explained that noise would not cause conductive hearing loss unless there was an acoustic trauma and that the record did not support workplace exposure to that type of trauma.

None of the other medical reports of record are sufficient to establish that appellant sustained a work-related hearing loss. Although Dr. Ambrose's August 2, 2004 report noted that an audiogram showed high-frequency hearing loss of the left ear due to shooting in the past, this description is too general and lacks specific medical explanation of how noise from firearms caused the claimed hearing condition.⁵ None of Dr. Ambrose's other reports address the issue of causal relationship.⁶

Dr. Knops' February 4, 2005 report diagnosed mixed hearing loss of the right ear, sensorineural hearing loss of the left ear, chronic serous otitis media and Eustachian tube dysfunction. While he noted appellant's noise exposure from shooting, he also noted appellant's history of Eustachian tube dysfunction and ruptured eardrums. To the extent that Dr. Knops' report supports causal relationship, he did not explain how exposure to shooting at work caused appellant's hearing loss condition. Such an explanation is particularly important because the record indicates appellant had a history of preexisting ear conditions. As none of the other reports of record contain an opinion on causal relationship, the medical evidence does not establish that appellant sustained hearing loss in the performance of duty.

On appeal, appellant asserts that the Office inappropriately based its decision solely on the opinions of Dr. Mueller and the Office medical adviser. He further asserts he has difficulty hearing conversations and that the Office did not consider the medical evidence from his treating physicians. As noted, appellant's burden of proof includes the submission of rationalized medical opinion evidence to establish that his claimed hearing loss was caused or aggravated by his federal employment. However, none of his treating physicians submitted reports that provided reasoned opinions on causal relationship. Appellant also asserts that the totality of the evidence demonstrates that he had normal hearing when hired and that his hearing loss was a direct result of the firearms training and exposure to incidents during his employment. The Board has held that neither the fact that the disease became apparent during a period of

⁵ See *S.E.*, 60 ECAB ____ (Docket No. 08-2214, issued May 6, 2009) (a medical opinion not fortified by medical rationale is of little probative value.); *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

⁶ See *S.E.*, *supra* note 5 (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁷

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 Office of Workers' Compensation Programs' decision dated October 1, 2009 is affirmed.

Issued: October 25, 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

⁷ *Ernest St. Pierre*, 51 ECAB 623 (2000).