

By letter dated August 3, 2009, the Office requested additional factual information from both appellant and the employing establishment. Appellant was requested to provide information regarding her employment history and nonoccupational exposure to noise. The Office also requested medical documentation pertaining to any treatment she had received for ear or hearing problems.

Appellant responded to the Office request by letter dated August 26, 2009. She stated that she had been an employee of the National Park Service for four years and her regular duties included scuba diving for several hours a day. Appellant further explained that no ear protection is available for use while scuba diving and that she was not exposed to any noise that could cause hearing loss. She stated that her hearing loss was temporary and that she had recovered completely.

In a July 24, 2009 emergency report, Dr. Leonel Cordova, a treating physician, diagnosed appellant with acute otalgia, right ear barotraumas probable. Appellant was advised not to work or dive for one week until released.

Appellant also submitted a July 31, 2009 audiology report from Dr. Charles Kosove, a Board-certified otolaryngologist, to show that she had recovered completely from her hearing loss. The audiology report revealed hearing thresholds of 10 decibels on the left and 10 decibels on the right.

By decision dated September 4, 2009, the Office denied appellant's claim on the grounds that she did not establish fact of injury. It found that appellant had established the occurrence of the claimed July 23, 2009 employment incident but failed to establish a diagnosed condition resulting from the employment incident.

On September 11, 2009 appellant requested review of the written record. In support of her request, she submitted a September 11, 2009 witness statement from Michelle Tongue, a biological technician and coworker, reported that appellant told her that she suffered an ear injury immediately after the incident occurred. Ms. Tongue stated that they had done multiple dives on July 23, 2009 and during the last dive appellant suffered an ear injury when ascending from depth. She noted that appellant was visibly in pain and had lost hearing in the affected ear.

By letter dated September 2, 2009, the employing establishment responded to the Office's request for additional information. Amanda Bourque, appellant's supervisor, stated that all statements on the (Form CA-1) were accurate to the best of her knowledge. She noted that appellant's injury was sustained while ascending from an underwater scuba dive and that no ear protection is available for scuba diving. Ms. Bourque further stated that appellant was not exposed to loud noises or any damaging noise for an extended period of time in the workplace. Along with this statement, the employing establishment also submitted a National Park Service position description for her assignment as a biological science technician.

In a July 24, 2009 medical report, Dr. Cordova noted appellant's chief complaint as pain and hearing loss in her right ear which had begun the previous day. He reported that she sustained ear trauma when diving the day before and found moderate erythema and mild dullness

of the tympanic membrane with mild loss of tympanic membrane landmarks. Dr. Cordova diagnosed appellant with acute otalgia.

In a July 24, 2009 Florida Workers' Compensation Uniform Medical Treatment/Status Reporting Form, Dr. Cordova indicated by check mark that appellant's injury was work related, diagnosing her with probable barotraumas of the right ear. He further indicated by check mark that there was no preexisting condition contributing to the current medical disorder and that the injury in question was the major contributing cause for the reported medical condition, the treatment recommended, and the functional limitations and restrictions determined.

By decision dated December 28, 2009, an Office hearing representative affirmed the Office's September 4, 2009 decision, as modified, to reflect that appellant suffered from hearing loss. The hearing representative found, however, that the medical evidence did not support that her ear condition was causally related to the diving incident on July 23, 2009.

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 Act² and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

When an employee claims that he sustained an injury in the performance of duty she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.⁵ Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.⁶

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁵ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ 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. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸

ANALYSIS

The Board finds that this case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁹ However, it is well established that proceedings under the Act are not adversarial in nature and, while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.¹⁰

The Office accepted that the July 23, 2009 incident occurred and that appellant suffered from pain and hearing loss in the right ear. It denied her claim, however, on the grounds that the evidence failed to establish a causal relationship between the July 23, 2009 diving incident and her hearing loss. The Board finds that the medical evidence of record supports a causal relationship between appellant's work activities and her hearing loss.

In a July 24, 2009 medical report, Dr. Cordova diagnosed appellant the day after the incident with acute otalgia, right ear barotrauma. He noted her chief complaint as right ear pain and hearing loss, reporting that she sustained ear trauma when diving the day before. Upon

⁷ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ See *E.J.*, 61 ECAB ____ (Docket No. 09-1481, issued February 19, 2010); see also *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

¹⁰ *Phillip L. Barnes*, 55 ECAB 426 (2004); see also *Virginia Richard*, *supra* note 9; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

examination, Dr. Cordova noted moderate erythema and mild dullness and loss of landmarks in appellant's tympanic membrane. In a July 24, 2009 Florida Workers' Compensation Medical Treatment form, he reported that her injury was work related with no preexisting condition contributing to the medical injury. Dr. Cordova further indicated that the injury in question was the major contributing cause for the medical condition. While his reports did not offer an unequivocal opinion or fully describe the mechanism of the injury, he provided an opinion, based on examination findings and an accurate factual and medical background, that appellant sustained an injury on July 23, 2009 due to the accepted diving incident.

Dr. Kosove's July 31, 2009 report displayed appellant's audiogram test results but failed to provide a diagnosis or state any causal relationship between her hearing loss and the July 23, 2009 diving incident. The Board has held that 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.¹¹

While none of the reports of appellant's attending physicians is completely rationalized, they are consistent in indicating that she sustained an employment-related injury to her right ear. Though the reports are not sufficient to meet her burden of proof to establish the claim, they strongly suggest and support a relationship between the July 23, 2009 diving incident and her right ear hearing loss.¹²

Appellant's Form CA-1 stated that she sustained hearing loss in her right ear when she was ascending from a dive on July 23, 2009. In an August 3, 2009 factual statement, she reported that her regular duties at the National Park Service include scuba diving for several hours a day with no available ear protection for use. Appellant further stated that she was not exposed to any noise which could cause hearing loss.

Appellant also submitted a September 11, 2009 witness statement from Michelle Tongue, her coworker, stated that appellant told her she suffered an ear injury when ascending from her dive and noted that appellant was visibly in pain and could not hear out of the affected ear. By letter dated September 2, 2009, the employing establishment stated that all of the statements on the Form CA-1 were accurate.

There is no dispute that the injury was witnessed and promptly reported to appellant's supervisor. Ms. Tongue was an eyewitness to appellant's outward signs of pain and the inability to hear out of her right ear immediately after ascending from the scuba dive. Further, the employing establishment supported the factual statements of the claim and confirmed that appellant was diving on July 23, 2009. No dispute exists as to fact of injury as appellant sought medical treatment the following day and provided a consistent recitation of facts as to the time, place and manner of the injury.

¹¹ *C.B.*, 61 ECAB ___ (Docket No. 09-2027, issued May 12, 2010); *S.E.*, 60 ECAB ___ (Docket No. 08-2214, issued May 6, 2009).

¹² See *Virginia Richard*, *supra* note 9.

The Board finds that the evidence submitted by appellant which contains a history of injury, an absence of any other noted trauma and an opinion that the right ear hearing loss was causally related to the July 23, 2009 diving incident is sufficient, to require further development of the record.

On remand, the Office should further develop the medical evidence by requesting that Dr. Cordova submit a rationalized medical opinion on whether the right ear pain and hearing loss was causally related to the July 23, 2009 diving incident. After such development of the case record as the Office deems necessary, a decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for a decision as to whether appellant sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 28, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further development consistent with this decision.

Issued: February 10, 2011
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board