United States Department of Labor
Employees' Compensation Appeals Board

R.F., Appellant	)	
and	)	**Docket No. 10-1770**
	)	**Issued: March 2, 2011**
DEPARTMENT OF THE AIR FORCE, TINKER AIR FORCE BASE, OK, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 16, 2009 appellant filed a timely appeal from a May 20, 2010 merit decision of the Office of Workers' Compensation Programs denying his hearing loss claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant established that he sustained a noise-induced hearing loss causally related to factors of his federal employment.

FACTUAL HISTORY

On November 30, 2009 appellant, then a 72-year-old retired machinist, filed an occupational disease claim alleging that he sustained a hearing loss and tinnitus as a result of employment-related noise exposure. The date of his last exposure was March 31, 2007, the date he retired.

The employing establishment acknowledged that appellant was exposed to loud noise during the course of his employment from July 1, 1980 through March 31, 2007, including noise from grinders, lathes and mills eight hours a day, five days a week.

Throughout his career, appellant underwent regular hearing tests from January 19, 1989 through March 6, 2007. His baseline audiogram was performed on January 19, 1989. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 hertz (Hz) revealed decibel losses of 10, 20, 10 and 10, respectively, and in the left ear decibel losses of 5, 15, 10 and 10, respectively. A March 6, 2007 audiogram showed losses of 15, 35 20 and 25 decibels at 500, 1,000, 2,000 and 3,000 Hz in the right ear, and 15, 30, 20 and 45 decibels in the left ear. In an undated letter, Captain Lesly Loisean, chief of audiology for the employing establishment clinic, notified appellant that he had a significant permanent hearing loss compared to his baseline audiogram.

On January 8, 2010 the Office informed appellant that he was being sent, together with the medical record and a statement of accepted facts (SOAF), for a second opinion evaluation to address the issue of whether he had noise-induced hearing loss as a result of his federal employment. The January 8, 2010 SOAF reported that appellant worked as a machinist from June 1980 to March 31, 2007 with exposure including noise from grinders, lathes and mills for five days a week, eight hours a day.

Appellant was referred to Dr. Ronald Wright, a Board-certified otolaryngologist, for an examination and an opinion as to whether he sustained a work-related hearing loss. In a February 8, 2010 report, Dr. Wright described the results of a January 26, 2010 audiogram. Testing of the right ear at frequency levels of 500, 1,000, 2,000 and 3,000 Hz revealed decibel losses of 30, 40, 25 and 35, respectively, and in the left ear decibel losses of 30, 30, 30 and 55, respectively. Dr. Wright diagnosed neurosensory/sensorineural hearing loss but opined that appellant's hearing loss was not due to his federal employment. He indicated that his loss was not in excess of what would normally be predicted on the basis of presbycusis. Dr. Wright agreed that the workplace exposure, as described, was sufficient as to intensity and duration to have caused the hearing loss. Applying the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, he opined that appellant had a zero percent permanent impairment due to his hearing loss.[1] Dr. Wright found that appellant did not have tinnitus and that he had reached maximum medical improvement.

The Office forwarded the case record to the district medical adviser (DMA) for review and an opinion on the degree of appellant's work-related hearing loss pursuant to the sixth edition of the A.M.A., *Guides*. The DMA was directed to provide medical rationale for his opinion.

In an April 23, 2010 report, the DMA opined that appellant was not entitled to a schedule award for hearing loss based on Dr. Wright's February 8, 2010 report. He noted Dr. Wright's

[1] Noting that appellant's pure tone average was 32.5 and 36.2 in the right and left ears, respectively, Dr. Wright calculated an 11.25 percent monaural loss in the right ear (32.5-25 decibels =7.5(x 1.25) = 11.25) and a 16.8 percent monaural loss in the left ear (36.2-25 decibels =11.2 (x 1.25) = 16.8). He concluded that since the resulting loss was less than 25 decibels in each ear, appellant had no ratable loss.

opinions that appellant's hearing loss was not due to his work-related noise exposure, which was deemed insufficient to have caused or contributed to the hearing loss. The DMA stated that appellant was not entitled to a schedule award, as the evidence did not establish that his hearing loss was related to his employment.

In a May 20, 2010 decision, the Office denied appellant's claim, finding that the medical evidence did not demonstrate that his hearing loss was related to the established work-related events. It relied on Dr. Wright's opinion in concluding that appellant's hearing loss was due to presbycusis and not due to his federal employment. The Office found there was no basis for a schedule award, since a causal relationship had not been established.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[3] He must establish that he is an employee within the meaning of the Act[4] and that he filed his claim within the applicable time limitation.[5] The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.[6]

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.[7]

ANALYSIS

There is no dispute that appellant was exposed to loud noises during his lengthy career at the employing establishment. The issue is whether the exposure caused his diagnosed hearing loss. The Board finds this case is not in posture for a decision.

[2] 5 U.S.C. §§ 8101-8193.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

[5] *R.C.*, 59 ECAB 427 (2008); *Kathryn A. O Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

[6] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

In his February 8, 2010 report, Dr. Wright, the Office's second opinion physician, provided no explanation for his opinion that appellant's diagnosed hearing loss was not due to his documented 27-year work-related exposure to loud noise, which he acknowledged was sufficient to cause the hearing loss. While he opined that appellant's hearing loss was consistent with presbycusis and stated that his hearing was within normal limits for his age, Dr. Wright did not explain why he believed the hearing loss was caused by presbycusis rather than exposure to noise in the workplace. The Board has consistently held that a medical opinion not fortified by rationale is of limited probative value.[8]

The district medical adviser concluded that appellant was not entitled to a schedule award, based in part on Dr. Wright's opinion that the noise exposure was not sufficient to cause the hearing loss. As noted, however, Dr. Wright opined that the work-related noise was, indeed, sufficient to have caused the hearing loss. As the DMA's report was based on incorrect facts, it is of diminished probative value.[9]

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.[10] When the Office selects a physician for an opinion on causal relationship, it has an obligation to secure, if necessary, clarification of the physician's report and to have a proper evaluation made.[11] Because it referred appellant to a second opinion physician, it has the responsibility to obtain a report that will resolve the issue of whether his hearing loss was caused by his federal employment.[12] As Dr. Wright's report is deficient, this case will be remanded to the Office for further development of the evidence. On remand, the Office should ask him to clarify his opinion.[13] If Dr. Wright is unable or unwilling to provide such clarification, then the Office should refer appellant to another specialist for an opinion on the relevant issue. Following this and any other further development deemed necessary, the Office shall issue an appropriate merit decision on appellant's occupational disease claim.

CONCLUSION

The Board finds this case is not in posture for a decision.

[8] *Cecilia M. Corley*, 56 ECAB 662 (2005).

[9] To be probative, a physician's report must be based on a complete factual and medical background. *See A.D.*, 58 ECAB 149 (2006).

[10] *P.K.*, 60 ECAB ___ (Docket No. 08-2551, issued June 2, 2009).

[11] *Alva L. Brothers, Jr.*, 32 ECAB 812 (1981).

[12] *See Ramon K. Farrin, Jr.*, 39 ECAB 736 (1988).

[13] When a medical evaluation is made at its request, the Office has the responsibility of obtaining a proper evaluation. *Leonard Gray*, 25 ECAB 147, 151 (1974).

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this opinion.

Issued: March 2, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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