United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 11-1644**
	)	**Issued: February 14, 2012**
DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, Portland, OR, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 28, 2011 appellant filed a timely appeal from a February 22, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) which denied his occupational disease claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 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 he sustained an occupational disease in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On November 4, 2010 appellant, then a 62-year-old heavy truck driver and utility worker, filed an occupational disease claim alleging that he sustained noise-induced bilateral hearing loss due to his employment.

On November 17, 2010 OWCP advised appellant that the evidence was insufficient to support his claim and requested additional evidence. It also requested additional evidence from the employing establishment.

In an undated statement, appellant explained that he worked as a utility man from December 1996 to April 2010 and was exposed to hammering, cutting, grinding and noise from power generation equipment for approximately 6 to 8 hours a day, 40 hours a week. He used ear protection equipment such as ear plugs and ear muffs.[2] On approximately April 15, 2003 appellant noticed that he was gradually having a more difficult time hearing and understanding what people were saying to him while he worked for the employing establishment. He stated that he had a service-connected disability for high-pitch hearing loss and tinnitus in both ears due to military service, but he believed that his work at the employing establishment worsened his hearing loss. Appellant also stated that his annual hearing examinations for the past 13 and 14 years demonstrated his hearing loss. He submitted a chart of his audiogram results from December 11, 1996 to June 25, 2008.

In an August 18, 2009 hearing evaluation report, a physician with an illegible signature, stated that appellant's recent hearing test demonstrated that he had severe hearing loss but no significant changes had occurred since his baseline hearing test. He provided the hearing results of appellant's most recent April 14, 2009 hearing test, which showed moderate-to-severe hearing loss in his left and right ears. uy

On December 23, 2010 appellant was referred to an otolaryngologist, along with a statement of accepted facts, for a second-opinion examination to determine whether he sustained hearing loss related to noise exposure at work.

In a January 12, 2011 second-opinion report, Dr. Timothy Frantz, a Board-certified otolaryngologist, reviewed appellant's medical history and noted that appellant suffered from bilateral high-frequency sensorineural hearing loss and bilateral subjective tinnitus. Appellant currently wore hearing aids provided by the Department of Veterans Administration and had a disability rating for tinnitus. Dr. Frantz related appellant's employment history and noise exposure at his several jobs. He reviewed the audiogram performed that day and found no significant air bone gap. Hearing thresholds at 500, 1,000, 2,000 and 3,000 hertz (Hz) were 20, 40, 65 and 60 decibels for the right ear and 20, 40, 60 and 70 decibels for the left ear. Dr. Frantz compared the current audiogram with the baseline audiogram in 1996 and noted significant

[2] Appellant also listed his previous employment. He was in the U.S. Marine Corps from 1965 to 1969. Appellant worked as a warehouse man and truck driver from 1969 to 1978 and 1979 to 1996 and was exposed to road and engine noise from the bob tail and tractor-trailer delivery trucks. He did not use hearing protection. Appellant worked as a cabinet maker from July 1978 to 1979 and was exposed to noise from woodworking tools. He used ear protection.

difference at the 1,000 and 2,000 Hz in both ears, but no significant change between 3,000 and 8,000 Hz. He explained that because these higher frequencies were generally the frequencies most affected by loud noise exposure, he believed that appellant did not sustain any significant hearing loss which may be related to federal civilian noise exposure. Dr. Frantz stated that the significant changes at the 1,000 and 2,000 Hz may be accounted for from the effects of presbycusis. He concluded that, although appellant suffered from bilateral sensorineural hearing loss it was not due to his federal employment.

In a decision dated February 22, 2011, OWCP denied appellant's claim finding that the medical evidence failed to establish that his hearing loss resulted from his federal employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim by the weight of the reliable, probative and substantial evidence[3] including that he sustained an injury in the performance of duty and that any specific condition or disability for work for which he claims compensation is causally related to that employment injury.[4] In an occupational disease claim, appellant's burden requires submission of 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.[5]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.[6] 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 specified employment factors or incident.[7] 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.[8] The mere fact that work activities may produce symptoms revelatory of an

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

[4] *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

[5] *R.H.*, 59 ECAB 382 (2008); *Ernest St. Pierre*, 51 ECAB 623 (2000); *D.U.*, Docket No. 10-144 (issued July 27, 2010).

[6] *D.I.*, 59 ECAB 158 (2007); *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *W.D.*, Docket No. 09-658 (issued October 22, 2009).

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

[8] *Solomon Polen*, 51 ECAB 341 (2000); *B.B.*, 59 ECAB 234 (2007); *D.S.*, Docket No. 09-860 (issued November 2, 2009).

underlying condition does not raise an inference of an employment relation. Such a relationship must be shown by rationalized medical evidence of a causal relation based upon a specific and accurate history of employment conditions which are alleged to have caused or exacerbated a disabling condition.[9]

ANALYSIS

The record establishes that appellant suffered from high-pitch hearing loss and tinnitus in both his ears due to his military service and that he was exposed to loud noise in his federal workplace. The issue, therefore, is whether this exposure caused or aggravated his hearing loss. In order to establish causal relationship, appellant must submit medical opinion evidence demonstrating that any additional hearing loss resulted from his federal employment.

OWCP referred appellant to Dr. Frantz, a Board-certified otolaryngologist, for a second-opinion examination. Dr. Frantz reviewed appellant's medical history and conducted a physical examination. He observed clear canals with intact skin and did not find any evidence of perforation, middle ear effusions or infection, cholesteatoma or middle ear masses. Dr. Frantz compared appellant's most recent audiogram with his baseline audiogram in 1996 and noted significant change at the lower frequencies of 1,000 and 2,000 Hz, but no significant change in the higher frequencies of 3,000 and 8,000 Hz. He found that appellant did not have any significant hearing loss which may be related to federal civilian noise exposure. Dr. Frantz indicated that appellant's hearing loss in the lower frequencies resulted from presbycusis. Thus, his report did not establish that exposure to noise in the workplace caused or aggravated his hearing loss.[10]

The additional medical evidence of record is also insufficient to establish appellant's claim. In an August 18, 2009 hearing evaluation report, a physician with an illegible signature stated that appellant's recent hearing test revealed severe hearing loss and that no significant changes had occurred since his baseline hearing test. The report, however, does not contain any medical opinion explaining how noise exposure at appellant's workplace may have aggravated his hearing loss. There are also other unsigned/illegible reports in the record that do not contain an opinion of causation. The Board has found 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] Accordingly, the Board finds that appellant has not met his burden of proof to establish through probative medical evidence that he suffered additional hearing loss in the performance of duty.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[9] *Patricia J. Bolleter*, 40 ECAB 373 (1988).

[10] *See J.L.*, Docket No. 07-1740 (issued December 20, 2007).

[11] *K.W.*, 59 ECAB 271 (2007); *R.E.*, Docket No. 10-679 (issued November 16, 2010).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that his hearing loss is causally related to his federal civilian employment.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 14, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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