

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

D.L., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Tomah, WI, Employer)

**Docket No. 16-1639
Issued: May 8, 2017**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 9, 2016 appellant filed a timely appeal from a July 15, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 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 met his burden of proof to establish hearing loss, tinnitus, and a consequential insomnia condition causally related to factors of his federal employment job duties.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On May 10, 2016 appellant, a 38-year-old pharmacist, filed a claim for occupational disease (Form CA-2), alleging that he developed an insomnia condition which was partly attributable to work-related tinnitus and hearing loss.

OWCP received on May 11, 2016 a report dated January 13, 2016 from Dr. Christine Jacobsen, a specialist in family practice. Dr. Christine advised that appellant believed that sitting near a running air conditioner at work had caused ringing in his ears and hearing loss. She reported that, because of this situation, appellant had experienced added pressure in his job and in his home life, causing anxiety and insomnia.

In an October 6, 2015 report, received by OWCP on May 11, 2016, Dr. Jacobsen advised that appellant was experiencing insomnia. She reported that this condition had been worsening, and that he recently had panic-type symptoms while driving next to a truck and also had experienced depression. Dr. Jacobsen asserted that, in light of the fact that his insomnia seemed to be increasing with his stress load, she would recommend prescribing medication which could also help depression.

In a November 8, 2015 report, received by OWCP on May 11, 2016, Dr. Jacobsen advised that appellant had been experiencing insomnia and anxiety problems, but advised that the medication she prescribed had been helping him sleep; he slept through the night most of the time and only had occasional awakenings. Dr. Jacobsen noted that appellant believed he was better able to handle his stressors when he was well rested, but he continued to be anxious and more irritable than he would prefer.

In a December 11, 2015 report, Dr. Jacobsen advised that appellant was having problems with his hearing. He reported that he had been seen by an audiologist five months previously and was informed that he had borderline hearing, although he believed that his hearing had worsened since then.

On May 16, 2016 OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It asked him to submit a comprehensive medical report from his treating physician describing his symptoms and the medical reasons for his condition, and an opinion as to whether his claimed condition was causally related to his federal employment, and a diagnosis of his claimed condition. OWCP afforded appellant 30 days to submit the additional evidence.

On May 20, 2016 the employing establishment controverted the claim. It rebutted appellant's assertion that he had developed insomnia due to hearing loss brought on by working in an office near a window air conditioner. Management noted that the window air conditioner was recently evaluated by environmental health technicians, and the readings were normal. In addition, the employing establishment noted that appellant was a pharmacist working in an office setting and was not exposed to loud noises.

In a written statement dated June 13, 2016, appellant asserted that he had advised Dr. Jacobsen that he experienced insomnia on October 6, 2015, which Dr. Jacobsen believed was

caused or worsened by anxiety or depression. He advised that he did not realize that his insomnia was primarily worsened by tinnitus until January 2016. Appellant asserted that a running air conditioner at work caused tinnitus from the middle of May until the end of June 2015. He therefore believed that the air conditioner was an employment-related factor which contributed to insomnia through tinnitus.

By decision dated July 15, 2016, OWCP denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish an insomnia condition in the performance of duty.

LEGAL PRECEDENT

An occupational disease or illness means a condition produced by the work environment over a period longer than a single workday or shift.² 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 a disease or condition for which compensation is claimed; (2) a factual statement identifying the 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. The medical opinion 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.³

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁵ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

Appellant has alleged that he was exposed to loud noise from a window air conditioner in the building where he worked, which caused the tinnitus/hearing loss condition he believed was the primary cause of his tinnitus. This assertion, was rebutted by management's May 20, 2016 letter indicating that the air conditioner was recently tested by environmental health technicians, which

² 20 C.F.R. § 10.5(q).

³ *Solomon Polen*, 51 ECAB 341, 343-44 (2000).

⁴ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁵ *Id.*

recorded normal readings.⁶ In addition, appellant failed to submit a probative, rationalized medical opinion containing a diagnosis causally related to this alleged exposure. The Board finds that appellant has not submitted medical opinion evidence sufficient to establish a causal relationship between a diagnosed condition and an accepted employment factor.

Dr. Jacobsen advised in reports dated October 6 and November 8, 2015 that appellant was experiencing insomnia, which was worsening, in addition to anxiety and depression. She prescribed medication to help him deal with these problems. In her December 11, 2015 report, Dr. Jacobsen related that appellant was having problems with his hearing. She noted that he was seen by an audiologist who told him that, five months previously, he had borderline hearing loss, but it had become worse since then. Dr. Jacobsen advised in her January 13, 2016 report that appellant believed that sitting near a running air conditioner at work had caused ringing in his ears and hearing loss. She advised that, because of this situation, appellant had experienced added pressure in his job and in his home life, causing anxiety and insomnia.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.⁷ The reports from Dr. Jacobsen are not sufficient to meet appellant's burden of proof as she did not present a rationalized opinion on the causal relationship between appellant diagnosed condition and an accepted employment exposure. She did not provide any medical reasoning to explain how and why she believed that appellant's exposure to loud noise could have caused or contributed to tinnitus or hearing loss, resulting in insomnia. The January 13, 2016 report merely asserts that appellant believed that sitting near a running air conditioner at work had caused ringing in his ears and hearing loss, and that his conditions were caused by this exposure. Dr. Jacobsen's opinion on causal relationship is of limited probative value in that she did not provide adequate medical rationale in support of her conclusions.⁸ Thus, the Board finds that appellant failed to meet his burden of proof as he failed to provide a rationalized, probative medical opinion relating his current condition to factors of his employment.

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.

⁶ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

⁷ *See Anna C. Leanza*, 48 ECAB 115 (1996).

⁸ *William C. Thomas*, 45 ECAB 591 (1994).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he developed hearing loss, tinnitus, or a consequential insomnia condition causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the July 15, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 8, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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