

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

D.E., Appellant)	
)	
and)	Docket No. 18-1770
)	Issued: March 20, 2019
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
Washington, DC, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 27, 2018 appellant filed a timely appeal from an August 1, 2018 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 this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish left ear hearing conditions causally related to the accepted May 31, 2018 employment incident.

FACTUAL HISTORY

On June 26, 2018 appellant, then a 37-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that, while in the performance of duty, he sustained immediate pain and hearing loss on May 31, 2018 as a result of a “loud squelch in left ear.” He indicated that he put his headset on his other ear and stayed on position. Appellant did not stop work.

In a development letter dated June 27, 2018, OWCP requested additional factual and medical evidence in support of appellant’s claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. By separate letter of the same date, OWCP contacted the employing establishment and requested that it provide further factual background of the claim. It afforded appellant 30 days to submit the requested evidence. In response, appellant submitted a report dated June 5, 2018 from Dr. Mark Wladecki, a Board-certified otolaryngologist, who diagnosed sudden idiopathic hearing loss and tinnitus, left ear. Dr. Wladecki noted that appellant had been exposed to a loud, sudden high-pitched noise which caused pain in his left ear and a temporary threshold shift. He reported that appellant was treated with prednisone for three days and then returned for a follow-up examination which revealed that he had no pain and his hearing was normal. Dr. Wladecki prescribed medication for appellant to take at night for a short period of time to increase blood flow to the ear.

In two responsive letters dated July 25, 2018, the employing establishment controverted appellant’s claim. It confirmed that communication equipment caused the tone, which was a one-time occurrence that lasted approximately three to five seconds, but the facility lacked the engineering capability to provide the decibel and frequency level of the noise exposure. The employing establishment argued that, although appellant’s physician diagnosed hearing-related medical conditions, he did not state the date of injury or indicate that the noise exposure occurred at work and, therefore, failed to establish causal relationship.

In a July 26, 2018 medical report, Dr. Wladecki noted that appellant had a problem with a high-pitched squeal at work in his left ear. He indicated that appellant had been exposed to a sudden high volume, causing hearing loss, and it was painful. Dr. Wladecki diagnosed acute hearing loss in the left ear and indicated that the symptom was ongoing. Additionally, he found that appellant presented with tinnitus.

By decision dated August 1, 2018, OWCP accepted that the May 31, 2018 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record was insufficient to establish causal relationship between appellant’s diagnosed conditions and the May 31, 2018 employment incident. It found that Dr. Wladecki had not identified the source of what caused the sound or its relationship to appellant and his federal employment duties.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish 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 FECA, that the claim was timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁸

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.⁹ 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 employee.¹⁰

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

⁷ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

⁸ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁹ *G.N.*, Docket No. 18-0403 (issued September 13, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

Neither, the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish left ear hearing conditions causally related to the accepted May 31, 2018 employment incident.

In his reports, Dr. Wladecki diagnosed sudden, acute idiopathic hearing loss and tinnitus in the left ear. He indicated that appellant developed a problem with his left ear due to being subjected to a high-pitched squeal at work. Dr. Wladecki noted that appellant had been exposed to a sudden, high volume, and high-pitched noise which caused his hearing to go out and a temporary threshold shift. However, he did not identify the date of injury, the source of the noise exposure, or the federal duties appellant was performing at the time of the noise exposure. Dr. Wladecki noted that appellant's conditions occurred while he was at work, but such generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how his employment activities actually caused or aggravated the diagnosed conditions.¹² The fact that a condition manifests itself during a period of employment is insufficient to establish causal relationship.¹³ A physician's opinion must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment exposure.¹⁴ Although he presented the diagnoses of appellant's acute idiopathic hearing loss and tinnitus in the left ear, Dr. Wladecki failed to provide a rationalized medical opinion explaining how the May 31, 2018 "loud squelch" incident caused or aggravated appellant's hearing conditions. For these reasons, the Board finds that his reports are insufficient to establish causal relationship between appellant's diagnosed left ear conditions and the accepted May 31, 2018 employment incident.

As appellant has not submitted rationalized medical evidence sufficient to establish his claim that he sustained a left ear hearing condition causally related to the accepted May 31, 2018 employment incident, he has not met his burden of proof to establish his claim.

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.

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹² *K.W.*, Docket No. 10-0098 (issued September 10, 2010).

¹³ 20 C.F.R. § 10.115(e). *See also Joe T. Williams*, 44 ECAB 518, 521 (1993).

¹⁴ *Victor J. Woodhams*, *supra* note 7.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish left ear hearing conditions causally related to the accepted May 31, 2018 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 20, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board