

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

G.G., Appellant)	
)	
and)	Docket No. 19-1249
)	Issued: November 22, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PATROL,)	
Harlingen, TX, 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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 16, 2019 appellant filed a timely appeal from an April 11, 2019 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, following the April 11, 2019 decision, OWCP received additional evidence. 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 a right ear condition causally related to the accepted February 20, 2019 employment incident.

FACTUAL HISTORY

On February 25, 2019 appellant, then a 43-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on February 20, 2019 he developed constant ringing and a “plugged feeling” in his right ear due to a loud high radio frequency in his service vehicle while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that appellant was injured in the performance of duty.

In a development letter dated March 5, 2019, OWCP noted that no evidence had been submitted with his claim. It advised him of the type of factual and medical evidence required to establish his claim. OWCP afforded appellant 30 days to provide the necessary evidence.

The record contains duty status forms (Form CA-17) dated March 5 and 14, 2019, noting a date of injury of February 20, 2019 and diagnoses of acoustic right ear trauma and tinnitus.³

In a March 6, 2019 report, Dr. Thomas Martens, an osteopathic physician specializing in family medicine, diagnosed right ear tinnitus and noise effects due to a February 20, 2019 employment incident. He noted that on February 20, 2019 appellant was in a work vehicle when the radio blasted into his right ear after it had been turned on, which caused immediate discomfort and ringing in the right ear. Dr. Martens noted that, since February 20, 2019, appellant had experienced right ear vibration, difficulty hearing low-pitched noises and sounds, and constant ringing in his right ear, including when going to sleep and waking up.

By decision dated April 11, 2019, OWCP accepted that the alleged incident occurred, as alleged, but denied appellant’s claim, finding that the medical evidence was insufficient to establish a diagnosis causally related to the accepted incident. It noted that tinnitus was not a medical diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 of FECA,⁵ 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

³ The signatures of the providers on the forms are illegible.

⁴ *Supra* note 1.

⁵ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

the employment injury.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁸ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence, generally in the form of medical evidence, to establish that the employment incident caused a personal injury.¹⁰

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.¹¹ 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.¹² 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.¹³

Regarding tinnitus, the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) provides that tinnitus is not a disease, but rather a symptom that may be the result of a disease or injury.¹⁴

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right ear condition causally related to the accepted February 20, 2019 employment incident.

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁹ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

¹⁰ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 8.

¹¹ *L.D.*, Docket No. 17-1581 (issued January 23, 2018); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *L.D.*, *id.*; *see also Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

¹³ *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

¹⁴ *D.L.*, Docket No. 19-0987 (issued October 23, 2019); A.M.A., *Guides* 249 (6th ed. 2009).

In his March 6, 2019 report, Dr. Martens noted that appellant experienced tinnitus and noise effects in his right ear. He indicated that appellant developed right ear discomfort and ringing due to being subjected to the radio blasting into his right ear after turning it on in a work vehicle. However, a medical report is of no probative value if it does not provide a firm diagnosis of a particular medical condition, or offer a specific opinion as to whether the accepted employment incident caused or aggravated the claimed condition.¹⁵ The Board has previously explained that tinnitus is not a disease, but rather is a symptom that may be the result of a disease or injury. As Dr. Martens did not offer a rationalized medical opinion establishing a diagnosed condition causally related to the accepted employment incident, his report is insufficient to establish appellant's claim.¹⁶

Appellant also submitted CA-17 forms dated March 5 and 14, 2019, which contained an illegible signature. The Board has held that reports that bear illegible signatures cannot be considered probative medical evidence because they lack proper identification that the author is a physician.¹⁷ Therefore, this evidence is of no probative value.

As appellant has not submitted rationalized medical evidence establishing a diagnosed right ear condition causally related to the February 20, 2019 employment incident, he has not met his burden of proof to establish his claim.¹⁸

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.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right ear condition causally related to the accepted February 20, 2019 employment incident.

¹⁵ See *L.E.*, Docket No. 19-0470 (issued August 12, 2019).

¹⁶ *M.B.*, Docket No. 19-0828 (issued September 17, 2019); *K.L.*, Docket No. 18-1029 (issued January 9, 2019).

¹⁷ *J.P.*, Docket No. 19-0197 (issued June 21, 2019).

¹⁸ *K.L.*, *supra* note 16.

ORDER

IT IS HEREBY ORDERED THAT the April 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2019
Washington, DC

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

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

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