

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH J. POTKANOWICZ and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Renton, WA

*Docket No. 98-1451; Submitted on the Record;
Issued February 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his left ear in the performance of duty on October 8, 1997, as alleged.

On October 8, 1997 appellant, then a 32-year-old air traffic controller, filed a traumatic injury claim (Form CA-1) alleging that at 1:24 p.m. "while working [number]19 radar position, an unexpected loud high pitched tone was heard through frequency 132.7 caus[ing] pain in inner left ear." On his CA-1 form appellant alleged that he notified his supervisor of the incident and stopped working at 2:45 p.m. that day. He indicated that he received medical care on October 9, 1997 from Dr. William J. Thieman, a Board-certified family physician. Also on the CA-1 form Kevin L. Woertman, a coworker, stated that he "was working the same position as [appellant] at 1:24 p.m. and heard the same high pitched and loud noise."

In support of his claim, appellant submitted an attending physician's report (Form CA-16) signed by his supervisor on October 9, 1997. The form was also completed and signed by Dr. Thieman on October 14, 1997 diagnosing "exposure to loud noise" and recommended a routine hearing test. Also submitted was an October 14, 1997 duty status report from Dr. Thieman. Dr. Thieman again stated his diagnosis as "exposure to loud noise" and indicated clinical findings as "normal appearing ear." He check marked "yes" indicating that the history of injury given by appellant corresponded with factors of his employment disability. Attached was a narrative report dated October 14, 1997 from Dr. Peter D. Cunningham, an audiologist, who gave a brief history of appellant's incident and noted "otoscopy was unremarkable." In summary of his evaluation Dr. Cunningham noted appellant had normal hearing sensitivity, normal word recognition ability and normal middle ear function in both ears and that there was no evidence of permanent acoustic trauma for either ear.

By letter dated November 19, 1997, the Office advised appellant that additional medical evidence was required in reference to his claim for a left ear condition under the Federal

Employees' Compensation Act¹ and provided a detailed list of evidence needed. The Office advised appellant that it needed a diagnosis based on objective findings and stated that "pain is not a firm diagnosis, it just reiterates a subjective complaint."

By letter dated December 4, 1997, the Office responded to appellant's inquiry as to whether a medical report was received; to which the Office answered: "To date, the medical report has not been received."

By letter dated December 11, 1997, the Office issued a decision denying appellant's claim for failure to submit sufficient medical evidence necessary to support his claim. The Office stated:

"The initial evidence of file supported that you actually experienced the claimed event. However, the evidence did not establish that a condition has been diagnosed in connection with this. Therefore, an injury within the meaning of the [Act] was not demonstrated."

By letter dated December 17, 1997, received by the Office on December 22, 1997, appellant requested reconsideration. In support of his request appellant stated that he had received a letter from Nigel Strozier, an Office claims examiner, notifying him that he had until December 19, 1997 to submit additional medical evidence to the Office in support of his claim; however, his claim was prematurely denied on December 11, 1997. Appellant requested that the Office reconsider his claim, reviewing the submitted evidence. Included with this evidence was a medical bill from Dr. Thieman. He attached his assessment of appellant's condition as noise exposure finding that "[Appellant's] TMs and canals look normal at this time. There is no erythema. No bulging. They move with valsalva. Remainder of ENT [ears, nose and throat] examination is normal." He referred appellant to Dr. Cunningham for a routine evaluation.

By decision dated January 8, 1998, the Office denied modification of the December 17, 1997 decision, finding that the new medical evidence submitted was insufficient to justify modification.

In an April 3, 1998 letter received by the Board on April 8, 1998, appellant requested an appeal by the Board. On appeal appellant seeks modification of his claim for a left ear noise induced hearing loss sustained on October 8, 1997.

The Board finds that appellant has not meet his burden of proof in establishing that he sustained an injury in the performance of duty on October 8, 1997, as alleged.

An employee seeking benefits under the Act has the burden of establishing 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally

¹ 5 U.S.C. §§ 8101-8193.

related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicted upon a traumatic injury or occupational disease.³

In a traumatic injury case, in order to determine whether a federal employee actually sustained an injury in the performance of duty, it must first be determined whether “fact of injury” has been established. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. 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 claimant.⁶

The evidence in the present case suggests that some sort of high pitched tone most likely transmitted through appellant’s headset because Mr. Woertman, appellant’s coworker, stated that he experienced the same high pitched tone while working along side appellant on October 8, 1997 at 1:24 p.m.

However, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence⁷ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on October 8, 1997 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship is a duty status report from Dr. Thieman, in which he noted “exposure to loud noise” and an October 9, 1997 report indicating appellant’s examination appears normal. Also submitted is a report from

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *supra* note 3.

Dr. Cunningham, an audiologist, who summarized appellant's hearing evaluation noting "Otoscopy was unremarkable." Dr. Cunningham also stated:

"Appellant has normal hearing sensitivity, normal [w]ord [r]ecognition ability and normal middle ear function in both ears. There is no evidence of permanent acoustic trauma for either ear."

None of these reports provide a probative, rationalized medical opinion indicating that appellant sustained a noise-induced hearing loss causally related to factors of his federal employment. The medical reports are not sufficient to establish that appellant sustained an injury on October 8, 1997 causally related to his federal employment.

Lastly, notwithstanding the Board's affirmance of the Office's January 8, 1998 decision denying benefits, the Board modifies the decision to find that appellant is entitled to reimbursement for or payment of expenses incurred for medical treatment for the 60-day period beginning October 9, 1997, the date the employing establishment official signed the Form CA-16, authorization for examination and/or treatment. By Form CA-16, authorization for examination and/or treatment, signed by the employing establishment official on October 9, 1997 the employing establishment authorized Dr. Thieman to provide medical care for a period of up to 60 days from that date. The employing establishment's authorization for appellant to obtain medical examination and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.⁸

The decision of the Office of Workers' Compensation Programs dated January 8, 1998 is hereby affirmed as modified.

Dated, Washington, D.C.
February 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁸ *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.