United States Department of Labor
Employees' Compensation Appeals Board

HOWARD L. PARKER, Appellant	)	
and	)	**Docket No. 06-585**
	)	**Issued: April 11, 2006**
TENNESSEE VALLEY AUTHORITY, BROWNS FERRY NUCLEAR PLANT, Decatur, AL, Employer	)	

Appearances:
Howard L. Parker, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 17, 2006 appellant filed a timely appeal from September 22 and November 3, 2005 decisions of the Office of Workers' Compensation Programs, which denied his claim for a hearing loss, and a nonmerit decision dated December 9, 2005 which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over both the merit and nonmerit issues of this case.

ISSUES

The issues are: (1) whether appellant sustained a hearing loss in the performance of duty causally related to factors of his federal employment; and (2) whether the Office properly refused to reopen his case for further review of the merits of his claim pursuant to 5 U.S.C. § 8128.

FACTUAL HISTORY

On May 3, 2005 appellant, a 77-year-old carpenter, filed an occupational disease claim alleging that on May 2, 2005 he first realized his hearing loss was due to his federal employment. The employing establishment noted appellant's last date of exposure was April 25, 1984.

The employing establishment submitted a June 22, 2005 memorandum describing appellant's noise exposure and noted that appellant worked intermittently during the period June 20, 1961 through March 26, 1984. The Office received a summary of results of audiograms for September 21, 1967, August 5, 1971, February 7, 1974, March 24, 1978 and April 5, 1982, including the audiograms.

By letter dated July 8, 2005, the Office asked appellant to submit additional evidence, including a complete job history (federal and nonfederal), a description of the source of his noise exposure at the employing establishment and medical evidence.

On August 23, 2005 the Office referred appellant, the record and a statement of accepted facts, to Dr. Benjamin Light, a Board-certified otolaryngologist, for a second opinion evaluation. He performed an otologic and audiometric evaluation on September 12, 2005. Dr. Light obtained an audiogram showing the following thresholds at 500, 1,000, 2,000 and 3,000 cycles per second (cps): on the left, 65, 70, 105 and 115 decibels; on the right; 75, 90 decibels and no response at the two higher frequencies. He diagnosed bilateral sensorineural hearing loss which he opined was not due to appellant's federal employment. In support of this conclusion, Dr. Light noted that appellant had a "degree of hearing loss prior to employment" and "no standard threshold shift." He recommended bilateral hearing aids, hearing protection and yearly audiograms.

By decision dated September 22, 2005, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained a bilateral hearing loss in the performance of duty causally related to factors of his employment.

Appellant requested reconsideration on October 24, 2005 and submitted an October 18, 2005 report by Dr. Kenneth F. LeMaster, a Board-certified otolaryngologist. He diagnosed severe to profound sensorineural hearing loss and recommended hearing aids and physical therapy.

By decision dated November 3, 2005, the Office denied modification of the September 22, 2005 decision. The Office found Dr. LeMaster's report insufficient to support entitlement as the physician provided no opinion as to the cause of appellant's hearing loss.

On November 21, 2005 appellant requested reconsideration. Appellant contended his hearing loss was employment related as he worked in noise free areas prior to working for the employing establishment.

On December 9, 2005 the Office denied appellant's request for reconsideration on the grounds appellant did not meet the requirements for further merit review.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden to establish the essential elements of his 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 or condition for which compensation is claimed is causally related to the employment injury.[2] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

To establish a causal relationship between appellant's bilateral hearing loss and his employment, he must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's condition and the implicated employment factors.[4] 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.[5]

ANALYSIS -- ISSUE 1

The medical evidence of record does not establish that appellant's hearing loss is causally related to his federal employment. Dr. Light is the only physician of record to offer an opinion on causal relationship and he found that appellant's hearing loss was not causally related to his federal employment. He noted that appellant had a preexisting hearing loss and there was no standard threshold shift. Based on the audiometric testing and examination, Dr. Light concluded that appellant's hearing loss was not caused or contributed to by his federal civilian employment noise exposure.

Subsequent to the September 22, 2005 decision denying his claim, appellant submitted an October 18, 2005 report by Dr. LeMaster who diagnosed severe to profound sensorineural hearing loss, but provided no opinion as to the cause of appellant's condition. The Board has held that medical reports which do not contain an opinion or any rationale on causal relationship are entitled to little probative value.[6] As Dr. LeMaster provided no opinion on causal relationship, his report is insufficient to create a conflict with Dr. Light regarding the cause of

[1] 5 U.S.C. §§ 8101-8193.

[2] *Barbara R. Middleton*, 56 ECAB ___ (Docket No. 05-1026, issued July 22, 2005).

[3] *Donald W. Wenzel*, 56 ECAB __ (Docket No. 05-146, issued March 17, 2005).

[4] *Kathryn E. Demarsh*, 56 ECAB ___ (Docket No. 05-269, issued August 18, 2005).

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Gloria J. McPherson*, 51 ECAB 441 (2000).

[6] *Mary E. Marshall*, 56 ECAB ___ (Docket No. 04-1048, issued March 25, 2005).

appellant's hearing loss. The medical evidence of record does not establish a causal relationship between appellant's employment and his diagnosed condition. Accordingly, the Office properly denied appellant's occupational disease claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act[7] vests the Office with discretionary authority to determine whether it will review an award for or against compensation. Thus, the Act does not entitle a claimant to a review of an Office decision as a matter of right.[8]

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office.[9] Section 10.608(b) provides that, when an application for review of the merits of a claim does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[10] When reviewing an Office decision denying a merit review, the function of the Board is to determine whether the Office properly applied the standards set forth at section 10.606(b)(2) to the claimant's application for reconsideration and any evidence submitted in support thereof.[11]

ANALYSIS -- ISSUE 2

In support of his request for reconsideration, appellant did not submit any additional evidence or argument. He stated that the employing establishment had submitted additional evidence on his behalf. However, no such evidence is of record. His contention that his hearing loss was employment related was not supported by the submission of medical opinion evidence. Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or submit relevant and pertinent new evidence not previously considered by the Office. It properly denied his request for further merit review of his claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a hearing loss in the performance of duty causally related to factors of his employment. The Board further finds that the Office properly denied his request for reconsideration.

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[7] 5 U.S.C. § 8128(a) ("[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application").

[8] *Jeffrey M. Sagrecy*, 55 ECAB ___ (Docket No. 04-1189, issued September 28, 2004); *Veletta C. Coleman*, 48 ECAB 367 (1997).

[9] 20 C.F.R. § 10.606(b)(2).

[10] 20 C.F.R. § 10.608(b).

[11] *Annette Louise*, 54 ECAB 783 (2003).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 9, November 3 and September 22, 2005 are affirmed.

Issued: April 11, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board