

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

A.B., Appellant

and

TENNESSEE VALLEY AUTHORITY, WIDOW
ARK FOSSIL PLANT, Stevenson, AL, Employer

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**Docket No. 06-1829
Issued: February 22, 2007**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 7, 2006 appellant filed a timely appeal of a July 20, 2006 merit decision of the Office of Workers' Compensation Programs, finding that he did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained right ear hearing loss while in the performance of duty.

FACTUAL HISTORY

On March 17, 2005 appellant, then a 57-year-old supervisory custodian, filed a claim for an occupational disease. On April 6, 2004 he first realized that severe hearing loss in his right ear was caused by factors of his federal employment. Appellant stated that his job required him to be around loud noise. In a March 17, 2005 statement, he provided his employment history which included work for private employers from 1969 to 1973 and 1974 to 1975. Appellant

began working for the employing establishment in 1975. He stated that he did not work around loud noises or have any ear or hearing problems prior to working for the employing establishment. Appellant's hobbies included football and basketball. He indicated that he was still exposed to hazardous noise at work. In an April 11, 2005 statement, appellant stated that he worked as an auxiliary operator for one and one-half years and thereafter as a custodian. He further stated that he was exposed to noise eight hours per day. Appellant indicated that he did not hunt and that he had not been around a lot of gun firing. He related that wearing hearing protection was mandatory.

Appellant submitted a medical questionnaire dated October 23, 1975 from Dr. L.A. Williams, an employing establishment physician, who reported findings on physical examination with regard to appellant's height, weight, temperature and blood pressure. Medical questionnaires dated March 1, 1979 and September 24, 1984 noted that appellant had an abnormal audiogram. Medical questionnaires dated August 3, 1981, October 22, 1992, October 8, 2002 and October 26, 2004 stated that appellant sustained hearing loss. A November 7, 1986 medical questionnaire of Dr. Hugh R. Caldwell, an employing establishment physician, also noted that appellant sustained hearing loss. An August 11, 1999 medical questionnaire from a physician whose signature is illegible reported normal findings.

Treatment notes from Dr. Caldwell and Jane B. Wells, Doris C. Rudder, Freda Evans and Peggy Hampton, employing establishment registered nurses, indicated that appellant was evaluated on intermittent dates between October 23, 1975 through September 14, 1988. Dr. Caldwell's March 19, 1987 treatment note stated that he sustained hearing loss in the right ear. Ms. Wells' September 14, 1998 treatment note provided a history that a shotgun went off close to appellant's ear when he was approximately 12 years old. She stated that he had known about the hearing loss in his right ear for many years.

Audiograms performed for the employing establishment's annual audiometric testing program are dated October 23, 1975 to April 6, 2004. There is no indication that the audiometric tests were performed by an audiologist or that any of the audiograms were verified by an otolaryngologist.

A May 5, 2005 medical report of C. Lewis Addison, an employing establishment audiologist, stated that, as a laborer and custodian, appellant's noise exposure would have been limited and it would have affected both ears equally. He noted appellant's awareness of his hearing loss for many years based on the shotgun blast incident that he related to an employing establishment nurse. Mr. Addison opined that since appellant was aware of his right ear hearing loss since childhood a normal audiogram obtained during his initial medical evaluation appeared to be contradictory. After reviewing an October 23, 1975 audiogram, Mr. Addison stated that it was likely invalid.

By letter dated May 11, 2005, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional information which included his exposure to noise at the employment establishment, in his prior employment, from the shotgun blast incident and his use of hearing protection. Appellant did not respond.

By decision dated June 16, 2005, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty. Appellant failed to submit the requested evidence.

On May 31, 2006 appellant requested reconsideration. He submitted a January 13, 2006 treatment note of Dr. Joseph A. Motto, a Board-certified otolaryngologist, who reviewed a normal magnetic resonance imaging scan and laboratory test results. Dr. Motto opined that appellant's hearing loss was either work related or viral in nature. He stated that appellant apparently sustained a sudden sensorineural hearing loss and the incident that caused it was undistinguishable. A January 3, 2006 audiogram accompanied Dr. Motto's treatment note.

In a decision dated July 20, 2006, the Office denied modification of its June 16, 2005 decision. The evidence submitted by appellant failed to establish that he sustained an injury at the time, place and in the manner alleged and a diagnosed medical condition causally related to an accepted work-related incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion 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

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴ Neither the fact that appellant's condition became apparent during a period of employment nor his belief that the condition was caused by his employment is sufficient to establish a causal relationship.⁵

ANALYSIS

Appellant alleged that he sustained hearing loss in his right ear due to exposure to hazardous noise while working as an auxiliary operator and a custodian for the employing establishment. The Board finds that appellant was exposed to noise in his federal employment. Appellant stated that he was exposed to loud noise eight hours per day while working as an auxiliary operator and custodian at the employing establishment. He also stated that prior to his employment at the employing establishment in 1975 he did not work around loud noises. Appellant noted that he wore earplugs, which was mandatory by the employing establishment, while performing his work duties. Mr. Pullen, a supervisor, noted that he witnessed appellant wearing earplugs when they worked around loud noises. The Board finds that the employment-related noise exposure did in fact occur during the course of appellant's work at the employing establishment.

The Board finds, however, that appellant did not submit sufficient medical evidence to establish that his right ear hearing loss was caused by the accepted noise exposure. Dr. Williams' October 23, 1975 medical questionnaire did not address the issue of whether appellant sustained a hearing loss due to employment-related noise exposure. His questionnaire is insufficient to establish appellant's claim.

Similarly, Dr. Caldwell's November 7, 1986 medical questionnaire and March 19, 1987 treatment note which stated that appellant sustained hearing loss is insufficient to establish appellant's claim. He failed to address whether the diagnosed condition was due to appellant's accepted employment-related noise exposure.

The audiograms performed by the employing establishment from March 2, 1979 to October 26, 2004 are of no probative value because they were not certified as required under Office procedures or reviewed by a physician. Office procedures advise that a certification must accompany each audiological battery indicating that the instrument calibration and the environment in which the tests were conducted met the specified accreditation standards.⁶ As no such certification accompanied the audiograms and they were not reviewed by a physician, they are not sufficient to substantiate appellant's claim.⁷

⁴ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

⁵ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

⁶ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8 (September 1995); Chapter 3.600, Exhibit 4 (September 1996).

⁷ *Vernon Brown*, 54 ECAB 376 (2003).

The medical questionnaires and notes bearing illegible signatures are of no probative value as the author(s) cannot be identified as a physician.⁸ As this evidence lacks proper identification, it does not constitute probative medical evidence.⁹ Thus, the medical questionnaires and report do not establish appellant's claim. The treatment notes of nurses who examined appellant or conducted testing are of no probative value inasmuch as a nurse is not considered a "physician" under the Act.¹⁰ The issue is whether appellant sustained an employment-related hearing loss. Mr. Addison as an audiologist is not competent to offer a medical opinion as he is not a physician under the Act. Thus, his opinion does not constitute competent medical opinion evidence.

Dr. Motto's January 13, 2006 treatment note stated that appellant's hearing loss was either work related or viral in nature. He opined that appellant apparently sustained a sudden sensorineural hearing loss and the incident that caused it was undistinguishable. Dr. Motto's opinion regarding the cause of appellant's hearing loss is speculative and equivocal in nature and, thus, of little probative value.¹¹ His treatment note is insufficient to establish appellant's claim.

Appellant has not submitted rationalized medical evidence establishing that he sustained hearing loss in the right ear causally related to work-related noise exposure. He has failed to meet his burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

⁸ See *Ricky S. Storms*, 52 ECAB 349 (2001); *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁹ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ 5 U.S.C. § 8101(2); see *Sheila A. Johnson*, 46 ECAB 323 (1994).

¹¹ *Ricky S. Storms*, *supra* note 8 (while the opinion of a physician supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty).

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board