United States Department of Labor
Employees' Compensation Appeals Board

W.G., Appellant	)	
	)	**Docket No. 08-782**
and	)	**Issued: July 18, 2008**
	)	
U.S. POSTAL SERVICE, Phoenix, AZ, Employer	)	
	)	

Appearances:
Brett Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 16, 2008 appellant filed a timely appeal from a January 18, 2007 decision of the Office of Workers' Compensation Programs which denied his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained aggravation of left wrist arthritis as a result of his February 2, 2006 traumatic injury.

FACTUAL HISTORY

On February 3, 2006 appellant, then a 44-year-old rural carrier, filed a traumatic injury claim alleging that on February 2, 2006 he reached for a parcel behind the seat in his vehicle and sustained an injury to his wrist.

Additional information was submitted. In a February 3, 2006 duty status report, Dr. James M. Hurley, Board-certified in family medicine, diagnosed appellant with left wrist strain/sprain and noted that he had arthritis. In a February 3, 2006 work status report, he

diagnosed strain and sprain of the left wrist as well as carpal tunnel syndrome in the left hand. In a February 3, 2006 physician's report of injury, Dr. Hurley noted that appellant had preexisting arthritis in the hands and feet and diabetes.

In a February 8, 2006 letter, the Office requested a comprehensive medical report from appellant's treating physician to explain how appellant's employment incident contributed to his condition.

Additional information was submitted. In a February 17, 2006 note, Dr. Hurley assessed appellant with a strain/sprain of the left wrist, "carpal tunnel syndrome (resolved)," de Quervain's tendinitis in the left wrist, tendinitis of the left elbow, possible subluxation of left thumb and recommended that he continue to wear the brace. Physical therapy notes dated February 23 and 28, 2006 were also submitted.

In a March 14, 2006 decision, the Office denied appellant's claim on the grounds that the evidence was not sufficient to establish that his condition was caused by the incident.

On October 13, 2006 appellant, through his representative, requested reconsideration and submitted additional information. In a March 17, 2006 note, Dr. Hurley noted that appellant has arthritis in both hands and because of using the right hand exclusively was getting weaker grip with the right. Physical therapy notes dated March 2 through 24, 2006 were also submitted. In a March 31, 2006 note, Dr. Hurley recorded that appellant's claim had been denied "apparently because of preexisting arthritis even though there was a definite injury and subluxation of the left thumb and sprain of the wrist. In an October 6, 2006 report, he stated that on February 3, 2006 he initially evaluated a strain/sprain of the left wrist and carpal tunnel syndrome and opined that appellant's injury was directly related to the accident. Dr. Hurley found appellant to have tenderness over the volar surface of the left wrist and interosseous area of the distal forearm. He stated that he had examined appellant every two weeks in order to demonstrate that he had an acute injury, definitely caused by the events described on February 2, 2006. Dr. Hurley also stated that arthritis may be a cause of some of the problems with worsening of the thumb joint in his left hand and aggravation of his right hand, but aggravation of his preexisting arthritis and perhaps even new traumatic arthritis are also the results of his injury by reasonable medical certainty.

In a January 18, 2007 merit decision, the Office modified the previous decision and accepted appellant's claim for left wrist sprain but denied an aggravation of left wrist arthritis.[1]

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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

[1] Additional information was submitted after the last merit decision. The Board is limited to the evidence before the Office at the time the decision is issued and cannot consider any new evidence on appeal.

[2] 5 U.S.C §§ 8101-8193.

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.[3] 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.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office 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 to be established is that the employee actually experienced the employment incident that is alleged to have occurred.[5] The second component is whether the employment incident caused a personal injury.[6] Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.[7]

ANALYSIS

Appellant alleged that he sustained a left wrist condition when he reached and lifted a parcel from the back of his truck on February 2, 2006. The Office accepted that the February 2, 2006 employment incident occurred as alleged and that appellant sustained a left wrist sprain as a result. The Office also denied appellant's claim for an aggravation of left wrist arthritis. The issue is whether the accepted employment incident caused an aggravation of left wrist arthritis. The Board finds that the medical evidence fails to establish the requisite causal relationship between the accepted incident and appellant's diagnosed condition.

The first diagnosis of an aggravation of arthritis was not until Dr. Hurley's October 6, 2006 report. In the report, he stated that "Arthritis may be a cause of some of the problems [appellant] currently suffers with worsening of the thumb joint in his left hand and aggravation of his right hand, but aggravation of [appellant's] preexisting arthritis and perhaps even new traumatic arthritis are also the results of his injury by reasonable medical certainty." While Dr. Hurley diagnosed aggravation of preexisting arthritis and opined that it was the result of appellant's injury, he failed to explain how the employment incident caused the condition. A mere conclusion without medical rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet the claimant's burden of proof.[8] The medical evidence must include rationale explaining how the

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *Elaine Pendleton*, *supra* note 3.

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4 at 352. Additionally, in order to be considered rationalized, the 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 claimant's specific employment factors. *Id.*

[8] *Beverly A. Spencer*, 55 ECAB 501 (2004).

physician reached the conclusion.[9] Dr. Hurley's reports fail to provide the medical opinion on causal relation necessary to demonstrate that appellant's condition is related to the employment incident. As such, appellant has failed to submit sufficient medical evidence to support his claim.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an aggravation of left wrist arthritis in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 18, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[9] *Id.*

United States Department of Labor
Employees' Compensation Appeals Board

W.H., Appellant	)	
and	)	**Docket No. 08-784**
	)	**Issued: July 18, 2008**
U.S. MARINE CORPS, Camp LeJeune, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 22, 2008 appellant filed a timely appeal from a September 7, 2007 schedule award decision of the Office of Workers' Compensation Programs. 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 has more than a six percent monaural hearing loss of his left ear, for which he received a schedule award.

FACTUAL HISTORY

On September 18, 2006 appellant, a 58-year-old pipe fitter and maintenance worker, filed a claim, alleging that he sustained a bilateral hearing loss causally related to factors of his federal employment. A statement of accepted facts dated March 27, 2007 indicated that appellant was exposed to hazardous noise from 1971 to 2005 from high pressure steam in mechanical rooms and boiler rooms. Appellant retired from the employing establishment on May 31, 2005.

In an audiologic and otologic evaluation dated April 17, 2007, Dr. George M. Brinson, a specialist in otolaryngology, noted findings based on an April 17, 2007 audiogram. At the frequencies of 500, 1,000, 2,000, and 3,000 hertz, the following thresholds were reported: left ear -- 25, 20, 20 and 50 decibels; right ear -- 20, 15, 15 and 45 decibels. Based on these findings, Dr. Brinson concluded that appellant had a hearing loss of six percent in his left ear with no ratable loss in his right ear.

In a memorandum dated May 30, 2007, an Office medical adviser reviewed Dr. Brinson's audiogram results determined that appellant had a six percent left-sided monaural hearing loss.

On September 7, 2007 the Office granted appellant a schedule award for a six percent monaural hearing loss to the left ear for the period April 17 to May 8, 2007, a total of 3.12 weeks of compensation.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees' Compensation Act[1] and the implementing federal regulation[2] set forth the number of weeks of compensation to be paid for permanent loss of use of specified members, functions and organs of the body listed in the schedule.[3] However, neither the Act nor the regulations specify the manner in which the percentage loss of a member, function or organ shall be determined. The method of determining this percentage rests in the sound discretion of the Office.[4] To ensure consistent results and equal justice under the law to all claimants, good administrative practice requires the use of uniform standards applicable to all claimants.[5]

Under the American Medical Association, *Guides to the Evaluation of Permanent Impairment,* hearing loss is evaluated by determining decibel loss at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted since, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech in everyday conditions.[6] Then the remaining amount is multiplied by 1.5 to arrive at the percentage loss of monaural loss. The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss. The lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.[7]

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[1] 5 U.S.C. § 8107 *et seq.*

[2] 20 C.F.R. § 10.304.

[3] *See Donald A. Larson*, 41 ECAB 947 (1990); *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

[4] *Id.*

[5] *Henry King*, 25 ECAB 39, 44 (1973); *August M. Buffa*, 12 ECAB 324, 325 (1961).

[6] A.M.A., *Guides* 250 (5th ed. 2001).

[7] *Id. See also Danniel C. Goings, supra* note 3.

ANALYSIS

The Board finds that appellant has no more than six percent monaural hearing loss to his left ear, for which he received a schedule award. Dr. Brinson's April 17, 2007 audiogram indicated that, at the frequencies of 500, 1,000, 2,000 and 3,000 hertz, the following thresholds were reported for the left ear -- 25, 20, 20 and 50 decibels. These decibels totaled to 115 and divided by 4, obtain an average hearing loss at those cycles of 28.75 decibels. The average of 28.75 decibels, when reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals 3.75 decibels, which when multiplied by the established factor of 1.5 totals a 5.63 percent hearing loss in the left ear. This loss was rounded to total six percent loss in the left ear.

Testing for the right ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibel losses of 20, 15, 15 and 45 respectively. These decibels amounted to 95, which, when divided by 4, obtains an average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels, reduced by 25 decibels (the first 25 decibels were discounted as discussed above), equals negative 1.25, which when multiplied by the established factor of 1.5 amounts to a nonratable hearing loss in the right ear. The Office medical adviser correctly determined that appellant had a six percent monaural hearing loss in his left ear. The Office properly granted him a schedule award on September 7, 2007 for this loss.

There is no other probative medical evidence of record establishing that he sustained any greater impairment.[8]

CONCLUSION

The Board finds that appellant has no more than a six percent monaural hearing loss of his left ear.

[8] The record contains several audiograms obtained by the employing establishment, but none of these were certified by a physician as accurate. The Board has held that, if an audiogram is prepared by an audiologist, it must be certified by a physician as being accurate before it can be used to determine the percentage of hearing loss. *Joshua A. Holmes*, 42 ECAB 231, 236 (1990).

ORDER

IT IS HEREBY ORDERED THAT the September 7, 2007 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: July 18, 2008
Washington, DC

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

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

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