

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

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**J.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ARMY  
NATIONAL GUARD, Lansing, MI, Employer**

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**Docket No. 08-800  
Issued: July 18, 2008**

*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 an October 23, 2007 decision of the Office of Workers' Compensation Programs that denied his claim. 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 met his burden of proof to establish that he sustained a noise-induced hearing loss causally related to factors of his federal employment.

**FACTUAL HISTORY**

On August 28, 2007 appellant, then a 54-year-old heavy mobile equipment repairer, filed an occupational disease claim alleging that daily exposure during his 17 years of federal employment caused a loss of hearing. He first became aware of the condition on September 19, 1990 and first realized it was employment related on March 26, 1991. His date of last exposure was March 17, 2006.

By letter dated September 4, 2007, the Office informed appellant of the evidence needed to support his claim. He was asked to provide a history of employment and a description of any hearing problems, together with any previous hearing tests and a narrative from the physician who diagnosed the problem. In an accompanying letter, the Office asked the employing establishment to submit information regarding noise exposure and medical examinations including audiograms. No response was forthcoming.

By decision dated October 23, 2007, the Office denied the claim on the grounds that appellant did not establish that he sustained an employment-related injury. The Office noted that neither appellant nor the employing establishment responded to the September 4, 2007 letters.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>2</sup>

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 diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion 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.<sup>3</sup>

Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>4</sup> Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>3</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>4</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

condition and the specific employment factors identified by the claimant.<sup>5</sup> 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.<sup>6</sup>

Office procedures set forth requirements for the type of medical evidence used in evaluating hearing loss. These include that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results include both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist's report include: date and hour of examination, date and hour of employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.<sup>7</sup> A physician conducting an otologic examination should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.<sup>8</sup>

### ANALYSIS

The Board finds that appellant did not establish that he sustained an employment-related hearing loss. By letters dated September 4, 2007, the Office informed appellant of the evidence needed to support his claim. He was asked to submit an employment history and a medical report, addressing his hearing and its relationship to his employment. The Office also asked that the employing establishment provide noise exposure and medical records. Neither responded in a timely fashion.<sup>9</sup>

Appellant did not submit medical evidence establishing the presence or existence of a hearing loss for which he claimed compensation. He did not provide a factual statement identifying employment factors alleged to have caused or contributed to the presence of the

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<sup>5</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>6</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

<sup>7</sup> See Federal (FECA) Procedure Manual, Part 3 -- Requirements for Medical Reports, *Special Conditions*, Chapter 3.600.8(a) (September 1995); *Luis M. Villanueva*, 54 ECAB 666 (2003).

<sup>8</sup> *Luis M. Villanueva, id.*

<sup>9</sup> The Board notes that on October 29, 2007 the Office received a packet of material from the employing establishment and received additional material on November 5, 2007. Appellant also submitted additional evidence with his appeal to the Board. The Board cannot consider this evidence, however, as its review of the case is limited to the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant retains the right to request reconsideration with the Office.

disease or condition or medical evidence establishing that the diagnosed condition is causally related to the employment factors he identified. Appellant did not meet his burden of proof to establish that he sustained an employment-related hearing loss.<sup>10</sup>

**CONCLUSION**

The Board finds that appellant did not establish that he sustained an employment-related hearing loss.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 23, 2007 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

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<sup>10</sup> Gary J. Watling, *supra* note 2.