

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

R.S., Appellant)

and)

DEPARTMENT OF THE NAVY, PUGET)
SOUND NAVAL SHIPYARD, Bremerton, WA,)
Employer)

**Docket No. 10-2128
Issued: June 2, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 19, 2010 appellant filed a timely appeal from a July 13, 2010 merit decision of the Office of Workers' Compensation Programs finding that he had not met his burden of proof to establish that his hearing loss was causally related to his federal employment. Pursuant to the Federal Employees' Compensation Act¹ and 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 his hearing loss is causally related to his federal employment.

FACTUAL HISTORY

On December 23, 2009 appellant, then an 88-year-old former federal employee who had worked as a production control supervisor, filed a claim for occupational disease alleging that he sustained a hearing loss as a result of noise exposure during his federal employment. The

¹ 5 U.S.C. § 8101 *et seq.*

employing establishment noted that appellant retired on June 10, 1977, which was his date of last noise exposure.

The record contains a work history and statement of accepted facts reflecting that appellant was exposed to loud noise at the employing establishment from 1940 through 1977, including noise from chipping guns, grinders, welders, cranes, sandblasters and air hammers.

In a December 28, 2009 report, Dr. Gerald G. Randolph, a Board-certified otolaryngologist, reviewed appellant's history of noise exposure during his military and federal civilian employment. He reported the results of audiometric testing, which revealed a bilateral sensorineural hearing loss with an audiometric configuration compatible with hearing loss due to a combination of past noise exposure and the aging process. Dr. Randolph stated that appellant had a ratable hearing loss of 15 percent in the right ear, 9.375 percent in the left ear, with a binaural hearing loss ratable at 10.31 percent. He stated that review of appellant's industrial audiograms would be necessary for a determination as to whether his hearing loss was caused by and/or aggravated by industrial noise exposure during his civil service employment.²

The employing establishment provided a chronological record of medical care and summary of audiological testing from July 30, 1959 through June 10, 1977. On June 17, 2010 the Office forwarded the audiograms and a statement of accepted facts to Dr. Randolph for his review and an opinion as to whether appellant's hearing loss was causally related to work-related noise exposure.

In a report dated June 24, 2010, Dr. Randolph diagnosed sensorineural binaural hearing loss, which he opined was not caused by industrial noise exposure. Although appellant had sufficient noise exposure to have potentially aggravated his hearing loss, the audiometric results were not compatible with hearing loss due to occupational noise exposure. Audiograms revealed that appellant's hearing in both ears had degenerated since his retirement in June 1977. Dr. Randolph explained that hearing loss due to noise exposure occurs at the time of noise exposure and does not increase in severity at a later date. He found, therefore, that appellant's hearing loss was largely or completely due to causes other than workplace noise exposure.

By decision dated July 13, 2010, the Office denied appellant's claim on the grounds that the evidence failed to support that his hearing loss was caused by his federal employment.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the 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 causal relationship, generally is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence,

² A December 23, 2009 audiogram showed hearing thresholds of 10, 25, 40 and 50 decibels on the left and 15, 30, 35 and 60 decibels on the right at 500, 1,000, 2,000 and 3,000 cycles per second.

which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between appellant'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 appellant.³

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.⁴

ANALYSIS

Appellant claimed that he sustained a hearing loss due to exposure to hazardous noise at work. Although the evidence establishes that he has a hearing loss and that he had workplace noise exposure, the medical evidence does not support that his hearing loss was caused by his civilian federal employment.

Dr. Randolph, a Board-certified otolaryngologist, provided a comprehensive report noting appellant's history and findings on examination and audiometric testing. He found that appellant's hearing loss was not employment related. Dr. Randolph explained his opinion on causal relationship, noting that appellant had a bilateral sensorineural hearing loss but that the configuration of the hearing loss obtained on audiometric testing was not typical of a noise-induced hearing loss. He observed that noise-induced hearing loss occurs at the time of the noise exposure and does not increase in severity at a later date. Since appellant's hearing loss increased after his retirement, Dr. Randolph concluded that it was due to causes other than industrial noise exposure.

Dr. Randolph's report is thorough and well rationalized. There is no other medical evidence supporting a causal relationship between appellant's hearing loss and his work-related noise exposure. The Board finds that the medical evidence of record is insufficient to establish that his federal employment caused or contributed to his hearing loss.

On appeal, appellant contends that he had sustained a hearing loss prior to his retirement in 1977. For reasons stated, the Board finds that he failed to meet his burden of proof to establish that his hearing loss was due to employment-related noise exposure.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained a hearing loss in the performance of duty.

³ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2010 is affirmed.

Issued: June 2, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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