

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of OLIVER MERCIER and DEPARTMENT OF THE NAVY,
NAVSEA FIELD OFFICE, Philadelphia, Pa.

*Docket No. 97-877; Submitted on the Record;
Issued December 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has more than a six percent binaural hearing loss causally related to his federal employment.

In the present case, the Office of Workers' Compensation Programs has accepted that appellant, a rigger, sustained a six percent binaural hearing loss during his federal employment from 1979 to 1993. By decision dated November 18, 1996, the Office denied appellant's claim for an additional schedule award on the grounds that appellant's hearing loss after 1993 was not causally related to his federal employment.

The Board has duly reviewed the case record and finds that appellant has not established that he is entitled to an additional schedule award.

On March 16, 1996 appellant filed a claim alleging that he had sustained additional bilateral hearing loss since August 1993. Appellant indicated that he was in receipt of retirement benefits since September 16, 1995. In support of his claim appellant submitted a March 21, 1996 report from Dr. Steven W. Fischer, a Board-certified otolaryngologist. Dr. Fischer noted that appellant had been employed for many years at the Naval Shipyard where he worked on a crane, and that he had also worked in an engine room of a ship where he had much noise exposure, the last day of work being September 15, 1995. He noted that prior to working in the Navy Yard, appellant had worked on a drill press. Dr. Fischer stated that an audiogram performed in his office on June 8, 1995 showed a moderate to profound bilateral sensorineural hearing loss in both ears, with a moderate amount of decreased discrimination ability in the right ear, and a lesser loss in the left ear. He stated that appellant's diagnosis was moderately severe bilateral sensorineural hearing loss which calculated pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, equaled a 27.5 percent binaural hearing loss. Dr. Fischer did not provide any medical explanation as to whether appellant's hearing loss after 1993 was causally related to his accepted employment injury or continued exposure to hazardous noise at the employing establishment.

On August 26, 1996 the Office referred appellant to Dr. Herbert Kean, a Board-certified otolaryngologist, a second opinion physician, to clarify the cause and extent of appellant's increased hearing loss. In a report dated June 6, 1996, Dr. Kean explained that appellant had been employed as a rigger at the employing establishment from 1979 until 1995, and that during this employment he wore earmuffs and plugs. He noted that appellant had stated that his hearing was getting worse in the right ear since he stopped working in 1995. Dr. Kean also noted that appellant had been involved in the bombing at St. Lo during the Normandy invasion during World War II, that he had worked at General Motors from 1959 to 1960 in the assembly line area wearing earmuffs and plugs, that he worked for General Electric in maintenance for seven years, and that he had worked at Belmont Iron for 10 years on a drill press, with ear protection. He stated that appellant's audiogram did not have a 4,000 cycle dip to indicate occupational hearing loss, however, that it appeared appellant had been exposed to "hearing problems" while living in France and while working in several industries before 1979. Dr. Kean stated that he had for comparison audiograms performed by Dr. Fischer, and that he had compared testing of June 1994, June 1995, and March 1996. He stated that these audiograms showed fair reliability with inconsistency. Dr. Kean noted that the change in hearing between June 1994 and June 1995 was very significant, showing a 20 decibel change at 500, 1,000 and 2,000 decibels, and a 15 decibel change at 3,000 and 4,000 decibels in the right ear, with similar changes in the left ear. He opined that these significant changes in all frequencies were inconsistent with a diagnosis of noise-induced hearing loss. Dr. Kean noted that an audiogram performed in his office in May 1996 showed the same patterns of significant change since 1994. He concluded that the appellant's change in hearing since 1994 was not related to his occupation as it was inconsistent with the history and natural course of occupational hearing loss. Dr. Kean noted that he would like to review appellant's audiograms dating back to 1979. The Office thereafter forwarded additional audiograms to Dr. Kean.

After reviewing additional medical records Dr. Kean submitted a supplemental report dated August 12, 1996. Dr. Kean stated that appellant began his career at the employing establishment with a significant bilateral, high-frequency hearing loss. He noted that appellant showed some changes in his hearing up to and including 1992, which could be related to the occupational noise of the shipyard. However, in 1993 his right ear showed a very significant change in all frequencies of 35 to 40 decibels. Dr. Kean stated that this loss was not consistent with a noise-induced hearing loss and was unrelated to his occupation. He explained that to have such a significant change in one year, from 1992 to 1993, was impossible as a result of occupation. He noted that from 1993 to 1995, there was a significant change in the low frequencies which was unrelated to his occupation in the left ear, and that during that same time period in the right ear, there was virtually no change, which was entirely inconsistent with occupational hearing loss. Dr. Kean stated that to further confuse the picture appellant's right ear hearing low frequencies actually improved by 10 to 15 decibels between 1995 and 1996, causing some suspicion of the validity of the audiogram.

The Office on October 3, 1996 again forwarded additional audiograms to Dr. Kean. In a report dated October 24, 1996, Dr. Kean further explained why appellant's hearing loss from 1993 to 1995 was not related to his employment. He explained that the ANSI 1999 standard indicated that maximal hearing loss secondary to occupation occurred during the first 10 to 12 years of employment, and this pattern was found in appellant's case between 1979 and 1993.

Dr. Kean noted that significant further progression in hearing loss was not expected in two years, from 1993 to 1995, also one could not expect to find low frequency hearing loss secondary to occupation. He indicated that the asymmetric nature of the progression was not consistent with occupational hearing loss. Dr. Kean noted that from March to May 1996 appellant actually showed some improvement in his hearing, which led him to think that the audiograms taken by Dr. Fischer were suspect. He concluded that it was his opinion that the lower frequency progression of hearing loss from 1993 to 1995 was related to medical conditions, including cardiovascular and blood pressure changes rather than to his occupation. The fact that a condition manifests itself or worsens during a period of employment does not raise an inference of causal relationship between a claimed condition and employment factors.¹ Causal relationship is a medical question which can only be resolved by the submission of medical evidence.² The only physician of record who addressed the issue of causal relationship of appellant's hearing loss after 1993 to his employment was Dr. Kean. Dr. Kean was provided with the medical evidence of record and after carefully reviewing appellant's employment history and medical history, he concluded that's appellant's hearing loss after 1993 was not causally related to factors of his federal employment. He has explained, with medical rationale, that occupational hearing loss does not present itself with a 20 decibel change in three ranges in a one- to two-year period; that the asymmetric nature of appellant's hearing loss progression was not consistent with occupational hearing loss; that the 1999 ANSI standard indicated that maximal hearing loss secondary to occupation occurred during the first 10 to 12 years of employment and this pattern was present in appellant's case from 1979 to 1993; and the occupationally induced low frequency hearing loss was not expected, but was related to cardiovascular and blood pressure changes. Dr. Kean also explained why he believed the audiograms taken by Dr. Fischer were suspect as to reliability, as appellant showed improvement in his hearing by May 1996.

In assessing medical evidence, the weight of such evidence is determined by its reliability, its probative value and its convincing quality. The factors which enter in such an evaluation include the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.³ The Board thus concludes that Dr. Kean's report constitutes the weight of the medical evidence and establishes that appellant's hearing loss after 1993 was not causally related to his employment.

¹ *Ruby I. Fish*, 46 ECAB 276 (1994).

² *Ronald M. Cokes*, 46 ECAB 967 (1995).

³ *Gary R. Sieber*, 46 ECAB 215 (1994).

The decision of the Office of Worker's Compensation Programs dated November 18, 1996 is hereby affirmed.

Dated, Washington, D.C.
December 17, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member