

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BOYD E. MORRIS and DEPARTMENT OF AGRICULTURE,
MEAT, POULTRY INSPECTION SERVICE, Minneapolis, Minn.

*Docket No. 96-1417; Submitted on the Record;
Issued June 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed a bilateral sensorineural hearing loss in the course of his federal employment.

The Board has duly reviewed the case on appeal and finds that appellant has not met his burden of proof in establishing that he developed a bilateral sensorineural hearing loss in the course of his federal employment.

Appellant filed a claim on August 23, 1995 alleging that he had developed a loss of hearing due to noise exposure in the performance of duty. In support of his claim, appellant submitted an audiological report indicating a bilateral loss of hearing as well as documents supporting noise exposure in the course of his employment.

The Office of Workers' Compensation Programs referred appellant for a second opinion evaluation with Dr. David Brian, a Board-certified otolaryngologist, to determine the cause and extent of his loss of hearing. In a report dated January 5, 1996, Dr. Brian reviewed appellant's audiogram and stated that there was no peak at 4000 typical of noise induced hearing loss. Dr. Brian diagnosed bilateral sensorineural hearing loss and stated, "I cannot comment as to whether this hearing loss is due to noise exposure, because it is not a typical noise exposure type of sensorineural pattern."

The Office referred appellant's medical records to the District medical director, Dr. Daniel D. Zimmerman, a Board-certified pediatrician, on February 2, 1996. In a report of that date, the Dr. Zimmerman stated, "Before one could, using reasonable medical judgment, offer an opinion as to whether this claimant has hearing loss induced by federal exposure, it will be necessary to obtain audiograms performed at earlier dates." He noted that the audiogram obtained by Dr. Brian was not an audiometric configuration that could be consistent with noise induced hearing loss. Dr., Zimmerman concluded, "Other audiograms and a pre-employment audiogram will likely shed light on whether this claimant has noise induced hearing loss from

exposures in federal employment.” On February 5, 1996 the claims examiner informed Dr. Zimmerman that no other audiograms were in existence. In a supplemental report dated February 6, 1996, Dr. Zimmerman noted that the audiogram was not typical of the curve seen with noise induced hearing loss. He stated that it was more consistent with presbycusis and that the audiogram did not suggest a noise induced hearing loss. Dr. Zimmerman concluded, “It is my opinion as it was Dr. Brian’s that the audiogram does not suggest a noise induced hearing loss.”

The Office denied appellant’s claim on February 8, 1996 finding that appellant had not established that his hearing loss was due to exposures in the course of his federal employment.

An employee seeking benefits under the Federal Employee’s Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of the Act and 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 or specific condition, for which compensation is claimed is causally related to the employment injury.²

In this case, appellant did not submit the necessary medical opinion evidence to establish a causal relationship between his diagnosed hearing loss and factors of his federal employment. The Office referred appellant for a second opinion evaluation with Dr. Brian and he did not support a causal relationship between appellant’s hearing loss and factors of his federal employment. The District medical director, Dr. Zimmerman, reviewed Dr. Brian’s report and concluded that appellant’s hearing loss was more likely due to presbycusis than noise exposure. The Board finds that there is no rationalized medical opinion evidence in the record supporting a causal relationship between appellant’s diagnosed condition and factors of his federal employment. The medical evidence suggests that appellant’s loss of hearing is not due to noise exposure, but to age-related presbycusis.

¹ 5 U.S.C. §§ 8101-1893.

² *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

The February 8, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

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

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member