

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAMUEL LEE DUMAS and DEPARTMENT OF THE NAVY,
NAVAL AIR REWORK FACILITY, North Island, Calif.

*Docket No. 97-2396; Submitted on the Record;
Issued April 27, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a hearing loss in his right ear while in the performance of duty.

In a decision dated May 2, 1997, the Office of Workers' Compensation Programs denied appellant's claim for hearing loss.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a hearing loss in the right ear in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim, including the fact 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.²

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 the 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 employment factors identified by the claimant were the proximate cause of the condition for

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.³

In the present case, the Office denied appellant's claim for right ear hearing loss on the grounds that the medical evidence failed to establish that he sustained right ear hearing loss due to employment factors.⁴ The record contains results of various audiograms which were obtained since 1981 which noted significant, high-frequency sensorineural hearing loss in the right ear. However, this evidence is of limited probative value on the relevant issue of the present case in that it does not contain an opinion on the cause of appellant's claimed hearing loss.⁵ The record, however, contains medical reports which indicate that appellant's claimed right ear hearing loss was not related to employment factors. In a report dated March 25, 1997, Dr. Frank Laird, III, a Board-certified otolaryngologist, to whom the Office referred appellant for otologic and audiologic evaluation, determined that appellant had bilateral chronic serious otitis media creating conductive hearing loss and underlying bilateral sensorineural hearing loss, greater in the right ear than the left. He also noted upon review of appellant's medical records that he had had hearing loss since 1981 and significant hearing loss in the right ear since 1983. Further, in a supplemental report dated April 14, 1995, Dr. Laird stated that appellant had had an asymmetric hearing loss, more in the right, since 1981, which had progressed significantly since 1983. Dr. Laird noted that because industrial hazardous noises causes symmetrical hearing loss, or similar hearing loss in both ears, appellant's asymmetrical hearing loss was not caused by employment factors. Given appellant's significantly greater hearing loss in the right ear, Dr. Laird concluded that it was caused by otitis media rather than factors of federal employment.

For these reasons, the Office properly denied appellant's claim that he sustained a hearing loss in the performance of duty.

³ *Jerry D. Osterman*, 46 ECAB 500 (1995).

⁴ Appellant is a tractor operator whose position description included towing aircraft to and from overhaul shops, docked aircraft carriers, test run-up spots and salvage areas. The statement of accepted facts refers to appellant's position as an aircraft towman.

⁵ See *Arlonia B. Taylor*, 44 ECAB 591 (1993) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue causal relationship).

The decision of the Office of Workers' Compensation Programs dated May 2, 1997 is hereby affirmed.

Dated, Washington, D.C.
April 27, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member