

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEROME CARTER and DEPARTMENT OF THE NAVY,
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-2424; Submitted on the Record;
Issued June 15, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

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 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 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 of Workers' Compensation Programs found that appellant did not submit sufficient medical evidence to establish that he sustained a hearing loss due to employment factors. Appellant submitted the results of 1987 and 1996 audiograms which noted hearing loss in both ears and undated audiograms which noted mild bilateral hearing loss.

¹ 5 U.S.C. §§ 8101-8193.

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

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

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.⁴ The record does, however, contain a medical report which indicates that appellant's claimed hearing loss was not related to employment factors. In a report dated April 29, 1997, Dr. Arnold K. Brenman, a Board-certified otolaryngologist, to whom the Office referred appellant for otologic and audiologic evaluation, stated that he compared an audiogram taken that day with the 1996 audiogram and noted similar audiometric patterns. In comparing the April 29, 1997 audiogram with the 1987 audiogram, Dr. Brenman noted "no evidence of progressive hearing deterioration by audiometry, during that period of time." He found that, since there were no preemployment audiograms with which to make a comparison coupled with the absence of a noise-hazardous workplace, appellant's asymmetrical hearing loss "cannot be explained on an occupational basis...." On May 14, 1997 an Office medical adviser reviewed Dr. Brenman's report and found a zero percent hearing loss. Appellant, therefore, has not met his burden of proof to establish that he sustained hearing loss causally related to factors of his federal employment.

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

The Office of Workers' Compensation Programs' decision, dated June 5, 1997, is affirmed.⁵

Dated, Washington, D.C.
June 15, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ *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 of causal relationship).

⁵ The Board notes that subsequent to the Office's June 5, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).