U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL A. BIDLENCIK and DEPARTMENT OF THE NAVY, NAVAL SUBMARINE BASE BANGOR, Silverdale, WA

Docket No. 99-815; Submitted on the Record;
Issued June 2, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant's employment-related binaural loss of hearing is ratable under the Federal Employees' Compensation Act for schedule award purposes; and (2) whether the Office of Workers' Compensation Programs abused its discretion by denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

The Office accepted that appellant sustained bilateral hearing loss in the performance of duty, causally related to hazardous noise exposure in his federal employment.[1] He continued to work for the employing establishment.

An audiogram performed on September 18, 1996 as the final part of an annual employing establishment hearing conservation examination follow-up, demonstrated the following decibel losses at 500, 1,000, 2,000 and 3,000 cycles per second (cps): 10, 10, 20 and 50 decibels respectively in the right ear; and 10, 15, 25 and 55 decibels respectively in the left ear.[2] No significant threshold shifts from appellant's July 30, 1990 baseline audiogram were identified.[3]

Thereafter appellant complained of a sudden hearing loss in his right ear with tinnitus and vertigo and an October 31, 1996 audiogram demonstrated the following decibel losses at 500, 1,000, 2,000 and 3,000 cps: 65, 65, 60 and 60 decibels respectively in the right ear, and 10, 10, 20 and 50 decibels respectively in the left ear.[4]

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[1] It also authorized payment of up to $2,000.00 for hearing aids.

[2] A copy of this audiogram was date stamped as received by the Office on December 20, 1996.

[3] A significant threshold shift is change of 20 dB or greater.

[4] In this subsequent audiogram the hearing losses in the left ear are not ratable.

By report dated January 3, 1997, Dr. Stephen A. Habener, a Board-certified otolaryngologist, noted that he first saw appellant on December 4, 1996 with a history of sudden hearing loss in the right ear that occurred about October 1, 1996. He noted that appellant had always had bilateral low-grade tinnitus since Vietnam, but that this episode was sudden and violent and was associated with a sudden hearing loss in the right ear and increased tinnitus in the right ear with some balance disturbance and vertigo. Dr. Habener noted that audiometric testing demonstrated a 70 decibels sensorineural hearing loss in the right ear and he opined that appellant suffered an arterial spasm of the blood supply to the inner ear, resulting in a sudden hearing loss, the disequilibrium, and increased tinnitus. He opined that appellant's nonresponse to prescribed Persantine for six weeks indicated that this would probably be a permanent condition.

By report dated April 10, 1997, Dr. Larry G. Duckert, a Board-certified otolaryngologist, noted that appellant was initially evaluated on October 31, 1996 for a balance disturbance which developed abruptly and was associated with a sensorineural hearing loss in his right ear approximately one month prior to evaluation. He noted that the hearing loss did not recover but that appellant's acute vertigo resolved; however, he indicated that appellant's balance remained compromised and that he continued to perceive disequilibrium. Dr. Duckert found that appellant's balance disturbance and hearing loss were "secondary to a degenerative condition involving the right inner ear."

By reports dated April 4 and 23, 1997, Dr. Michael C. Jungkeit, a Board-certified otolaryngologist, noted that he evaluated appellant on October 16, 1996 for sudden hearing loss and balance problems and that since that time appellant had undergone evaluation and testing by Dr. Duckert. He noted that hearing tests documented a severe sensorineural hearing loss in the right ear, noted that a glycerol audiogram and electrocochleography confirmed the presence of hydrops of the right ear and noted that these findings were consistent with Meniere's disease. Dr. Jungkeit explained that Meniere's disease was a chronic condition involving sometimes fluctuating significant hearing loss, intermittent imbalance and dizziness and ringing of the ears.

On July 17, 1997 the Office referred appellant to Dr. Habener for a second opinion physical examination and otologic evaluation to ascertain the nature of appellant's increase in right ear loss of hearing. Questions to be addressed were included.

By report dated August 6, 1997, Dr. Habener noted that he had previously examined appellant on December 4, 1996 for a sudden hearing loss in the right ear associated with dizziness, balance disturbance and ringing in the right ear, with onset in October 1996. He noted that computerized tomography (CT) scan, magnetic resonance imaging (MRI) scan, electroencephalograph (EEG) testing and other visceral testing and audiograms demonstrated that appellant's problem was "endolymphatic hydrops or Meniere's [disease], in the right ear as the cause of the balance disturbance, the ringing and the very sudden sensorineural hearing loss in the right ear." Dr. Habener reviewed appellant's audiograms back to 1990 and noted that the high-frequency sensorineural hearing loss from noise exposure over his employment period from 1983 to the present, "was not a real problem to him until the October episode with the onset of Meniere's [disease]." He noted that the audiogram performed that date yielded consistent and reliable results demonstrating "marked threshold changes in the right ear from the Meniere's

[disease]." Dr. Habener noted that the right ear audiograms had been stable over the past seven years and prior to the onset of the Meniere's disease and compared similarly to the July 30, 1990 audiogram. He noted that, regarding the present audiogram, the hearing loss in the left ear calculated out, using the 4-frequency formula, to a 0 percent loss of hearing and the right ear calculated out to a 69.4 percent hearing loss. Dr. Habener opined:

> "[W]e are seeing bilateral sensorineural hearing loss from noise exposure with the added sensorineural loss in the right ear due to the Meniere's disease. This is not employment related. The loss *[sic]* in the left are *[sic]* probably reflects the pre-Meniere's episode loss in the right ear and is not at compensable levels…."

On August 20, 1997 the Office reviewed Dr. Habener's report and referred the record to the Office medical consultant for a determination of whether appellant had any ratable noise-induced hearing loss.

On August 24, 1997 an Office audiology consultant opined that appellant's bilateral hearing loss had progressed while he worked for the employing establishment, but that "[t]his portion of his loss is not ratable in either ear." The Office consultant calculated that, based upon a July 21, 1994 audiogram with all of the indices of trustworthiness, appellant had a zero percent bilateral hearing loss.[5]

By letter dated October 3, 1997, the Office advised appellant that his level of hearing loss was not sufficient to be ratable for schedule award purposes.

By report dated December 4, 1997, Dr. Jungkeit reviewed appellant's history and noted that he had experienced tinnitus in both ears for several years prior to the onset of his additional symptoms of Meniere's disease. He noted that "[appellant's] most recent audiogram supports a pattern of noise-induced hearing loss, at least in the left ear and it is highly likely that the more advanced hearing loss seen in the right ear is secondary to advanced Meniere's disease. While it is true that tinnitus is a symptom of Meniere's disease, it is unlikely that the tinnitus experienced several years ago secondary to noise-induced hearing loss, was related at all to the subsequent development of Meniere's disease in [appellant]. It is also not felt that noise-induced hearing loss leads to the development of Meniere's disease."

By report dated December 22, 1997, Dr. Eric A. Rasmussen, a Board-certified otolaryngologist, reviewed appellant's history of noise exposure, noted that his symptoms prior to October 1996 consisted of bilateral tinnitus and bilateral hearing loss and noted the October 1996 onset of Meniere's disease. By report dated December 30, 1997, Dr. Rasmussen noted:

[5] The Board notes that the Office medical adviser failed to explain why he chose to use this 1994 audiogram, as it was not the most recent pre-Meniere's disease audiogram of record. Using the most recent September 18, 1996 audiogram, the approved method of calculation results in a ratable percentage of monaural hearing loss in the left ear of 1.875 percent. However, using the post-Meniere's October 31, 1996 audiogram, the left ear hearing loss ceases to be ratable, such that the September 18, 1996 left ear ratable loss was demonstrably not a permanent loss. Accordingly, the Office medical adviser's use of the 1994 audiogram was harmless error.

> "My review of audiograms performed in 1990, 92, 93 and 1994 reveal that [appellant] had a bilateral high frequency hearing loss at 3,000 Hz [hertz] and above as far back as 1990 and that this loss was symmetrical bilaterally but did not significantly involve the speech frequencies. However, on an audiogram in 1995 there was a bilateral mild hearing loss in the speech frequencies, including 40 dB at 2,000 Hz in the left ear and 35 dB at 2,000 Hz in the right ear. Based on the hearing test performed in 1995, [appellant] still has a relatively good preservation of hearing in the speech frequencies and at that time would likely not have qualified for a handicap or pension based on hearing loss, but nonetheless would put [appellant] in a difficult situation hearing wise when in the presence of loud noise and also into a category where hearing aids at that point would have been helpful. When [appellant] suffered the onset of Meniere's disease and the drop in hearing in the mid and low frequencies in the right ear, this combined with the previous hearing loss served to make for a difficult situation, one that is significantly worse than if [appellant] had normal hearing and then developed Meniere's disease."

On April 20, 1998 appellant claimed that both his tinnitus and his Meniere's disease were work related.

By report dated May 15, 1998, Dr. Rasmussen opined that appellant's hearing loss was a mixed type, secondary to a combination of both noise exposure and sudden onset of right Meniere's disease in October 1996.

On July 22, 1998 the Office referred the record, together with a statement of accepted facts, and questions to be addressed, to Dr. James A. Donaldson, a Board-certified otolaryngologist, for a second opinion as to whether appellant's Meniere's disease and tinnitus were employment related and as to whether he sustained any ratable loss of hearing causally related to his federal employment.

By report dated August 20, 1998, Dr. Donaldson reviewed the records and audiograms and noted that appellant experienced significant hearing loss between 1983 and 1990, but noted:

> "[S]ubsequent to 1990 there was no significant loss in his hearing on the left, although there was loss in hearing on the right that could be reasonably attributed to Meniere's disease.… [S]ubsequent to 1990 [appellant's hearing loss] has not increased except for his Meniere's ear. For calculation purposes it may be reasonably assumed that the loss attributable to noise in his right ear is identical to the loss attributable to noise in his left ear and that the difference between that calculation and his current loss in his right ear is attributable to Meniere's disease. Using these reasonable assumptions, [appellant] has a zero percent loss in his left ear, a zero percent loss in his right ear and a zero percent binaural loss. Superimposed on these sensorineural losses caused by noise he does have a significant loss in his right ear."

Dr. Donaldson further noted that appellant began his work as a gas detection monitor in 1990 and opined:

> "There has been no significant change in the hearing in his left ear since 1990 and it is presumed … that the sensorineural loss related to noise ought to be the same in [appellant's] right ear as in his left. There would be no reason that working as a gas detection monitor would cause Meniere's disease unless it did so by virtue of exerting undue stress."

Included audiometric findings obtained on August 19, 1998 by a certified audiologist revealed the following demonstrated decibel losses at 500, 1,000, 2,000 and 3,000 cps: 65, 70, 60 and 65 decibels respectively in the right ear; and 10, 5, 20 and 50 decibels respectively in the left ear. Dr. Donaldson calculated that these decibel losses resulted in a 60 percent monaural loss in the right ear and a 0 percent monaural loss in the left ear.

By decision dated September 11, 1998, the Office found that the record did not establish that appellant was entitled to a schedule award, because the level of hearing loss prior to onset of Meniere's disease was not ratable. The Office found that, although appellant was exposed to hazardous noise levels up to 110 decibels prior to 1990, from 1991 on his work as a gas detection monitor exposed him to noise levels under 85 decibels, specifically from 78 to 84.4 decibels varied up to 2 to 3 hours per day through December 1996. The Office determined that appellant's work as a gas detection monitor, therefore, did not expose him to hazardous noise sufficient to cause further hearing loss, nor did it contribute to the Meniere's disease. The Office further noted that all physicians of record determined that appellant's employment-related hearing loss prior to the onset of Meniere's disease was nonratable for schedule award purposes and that appellant's subsequent hearing loss due to the Meniere's disease was not caused by his employment.

By letter dated October 20, 1998, appellant requested an oral hearing regarding the September 11, 1998 decision and he submitted further evidence.

By decision dated November 18, 1998, the Branch of Hearings and Review found that appellant was not entitled by right to a hearing, as his request was untimely made and it denied his request on the grounds that the issue in question could be equally well addressed by requesting reconsideration from the Office and submitting new and relevant evidence.

The Board finds appellant's employment-related binaural loss of hearing is not ratable under the Act for schedule award purposes.

A claimant seeking compensation under the Act[6] has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence.[7] Section 8107 of the Act and section 10.304 of the implementing federal regulation,[8] provide that if there is permanent disability involving the loss or loss of use of a member or

[6] 5 U.S.C. §§ 8101-8193.

[7] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[8] 20 C.F.R. § 10.304.

function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled bodily member or function.[9]

However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, fourth edition, 1993, as a standard for determining the percentage of impairment and the Board has concurred in such adoption.[10]

The Office evaluates hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using hearing levels recorded at frequencies of 500, 1000, 2000 and 3000 cps. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted because, according to the A.M.A., *Guides*, losses below 25 decibels result in no impairment in the ability to hear everyday sounds, including speech, under everyday listening conditions. The remaining amount is multiplied by 1.5 to arrive at the percentage of monaural hearing loss.[11] Binaural hearing loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of binaural hearing loss.[12] The Board has concurred in the Office's adoption of this standard for evaluating hearing loss for schedule award purposes.[13]

In this case, the Office medical adviser applied the Office's standardized procedures to an audiogram obtained on July 21, 1994. Testing that date for the right ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed losses of 10, 5, 10 and 40 decibels, respectively. These losses were totaled at 65 decibels and divided by 4 to arrive at an average hearing loss of 16.25 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the right ear.

Testing for the left ear at frequencies of 500, 1,000, 2,000 and 3,000 cps revealed losses of 15, 5, 25 and 45 decibels, respectively. These losses were totaled at 90 decibels and divided by 4 to arrive at an average hearing loss of 22.5 decibels. The average loss was reduced by 25 decibels (the first 25 decibels are discounted, as discussed above) to equal 0 decibels, which was multiplied by 1.5 to arrive at a 0 percent hearing loss for the left ear.

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[9] 5 U.S.C. § 8107(a). It is thus the claimant's burden of establishing that he sustained a permanent impairment of a scheduled member or function as a result of his employment injury; *see Raymond E. Gwynn*, 35 ECAB 247 (1983) (addressing schedule awards for members of the body that sustained an employment-related permanent impairment); *Philip N.G. Barr*, 33 ECAB 948 (1982) (indicating that the Act provides that a schedule award be payable for a permanent impairment resulting from an employment injury).

[10] *See, e.g., Francis John Kilcoyne*, 38 ECAB 168 (1987).

[11] A.M.A., *Guides* (4th ed. 1993).

[12] *See also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(b)(2) (October 1990).

[13] *E.g., Danniel C. Goings*, 37 ECAB 781 (1986).

The Office followed its standardized procedures and correctly calculated appellant's monaural losses and therefore binaural hearing loss, in 1994 as zero percent. At that time, although appellant had sustained a permanent binaural hearing loss, the extent of that loss was not great enough to impair his ability to hear everyday sounds under everyday conditions and was not great enough at that time to entitle him to compensation under the Act.

The Board noted above that the Office medical adviser failed to explain why he chose to use this 1994 audiogram, as it was not the most recent pre-Meniere's disease audiogram of record. Using the most recent pre-Meniere's disease September 18, 1996 audiogram, the approved method of calculation results in a ratable percentage of monaural hearing loss in the left ear of 1.875 percent. However, the post-Meniere's October 31, 1996 audiogram, demonstrated that the left ear hearing loss ceased to be ratable, such that the September 18, 1996 left ear ratable loss was demonstrably not a permanent loss. Accordingly, the Board finds that the Office medical adviser's use of the 1994 audiogram was a harmless error.

Consequently, the record establishes that appellant's noise-induced hearing loss prior to the onset of his right-sided Meniere's disease was not ratable for schedule award purposes.

However, appellant's post-October 1996 audiograms do establish that appellant has a serious hearing loss, but only in his right ear. The audiograms obtained post-October 1996 continue to demonstrate that appellant's left ear hearing losses remain nonratable and therefore he remains ineligible for a schedule award for loss of hearing in his left ear.

If the medical evidence of record supported that the sudden increase in right ear hearing loss occurring in October 1996 was causally related to factors of appellant's employment, that severe hearing loss would be ratable for schedule award purposes. However, in the instant case there is no medical evidence of record which supports that the October 1996 onset of increased right ear hearing loss diagnosed as being due to Meniere's disease, is employment related.

All physicians of record attribute the sudden change in appellant's right ear hearing loss that occurred in October 1996 to the onset of Meniere's disease. No physicians of record attribute the October 1996 sudden onset of severe hearing loss to factors of his employment. Further, no physicians of record attribute the onset of Meniere's disease in October 1996 to factors of appellant's employment. Therefore, the additional right ear loss of hearing that occurred in October 1996 is not compensable under the Act because it has not been proven to be causally related to factors of appellant's employment.

An award of compensation may not be based on surmise, conjecture, speculation or appellant's belief of causal relationship.[14] A person who claims benefits under the Act[15] has the burden of establishing the essential elements of his claim.[16] Appellant must establish that he

[14] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979); *Miriam L. Jackson Gholikely*, 5 ECAB 537, 538-39 (1953).

[15] 5 U.S.C. §§ 8101-8193 (1974).

[16] *Nathaniel Milton*, 37 ECAB 712, 722 (1986); *Paul D. Weiss*, 36 ECAB 720, 721 (1985).

sustained an injury in the performance of duty and that his disability resulted from such injury.[17] As part of this burden, a claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.[18] The mere manifestation of a condition during a period of employment does not raise an inference of causal relationship between the condition and the employment.[19] Neither the fact that the condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.[20]

In this case, appellant failed, due to his lack of submission of supportive, rationalized medical evidence, to meet his burden of proof to establish that his additional right ear hearing loss that occurred in October 1996 was causally related to his federal employment. Therefore, although the right ear hearing loss is sufficiently severe to be ratable under the Act, no schedule award is payable.

Appellant further contends that he is entitled to compensation for tinnitus which he allegedly sustained as a result of hazardous noise exposure during the course of his federal employment. However, the Board has repeatedly held that there is no basis for paying a schedule award for a condition such as tinnitus unless the medical evidence establishes that the condition caused or contributed to a ratable permanent loss of hearing.[21] In the instant case, there is no evidence that any pre-October 1996 tinnitus caused any ratable loss of hearing, and no evidence that post-October 1996 left ear tinnitus caused any ratable loss of hearing. Further, although appellant developed more severe right ear tinnitus due to his October 1996 onset of Meniere's disease, which may or may not have caused some of his additional right ear hearing loss, such additional tinnitus or hearing loss due to such tinnitus would not be compensable as it was related to his onset of Meniere's disease and was not causally related to factors of appellant's employment.

The A.M.A., *Guides* also allows for an award for tinnitus connected with disturbances of vestibular function.[22] However, the record does not support that appellant had any disturbances of vestibular function due to tinnitus prior to October 1996 and his post-October 1996 tinnitus and vestibular dysfunction has not been shown to be causally related to his employment, such that no schedule award can be paid.

Appellant would be entitled to compensation if it were established that his employment-related tinnitus resulted in a loss of wage-earning capacity.[23] As appellant's post-

[17] *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

[18] *Mary J. Briggs*, 37 ECAB 578, 581 (1986); *Joseph T. Gulla*, 36 ECAB 516, 519 (1985).

[19] *Edward E. Olson*, 35 ECAB 1099, 1103 (1984).

[20] *Bruce E. Martin*, 35 ECAB 1090, 1093 (1984); *Dorothy P. Goad*, 5 ECAB 192, 193 (1952).

[21] *See Charles H. Potter*, 39 ECAB 645, 648 (1988); *see, e.g., Royce L. Chute*, 36 ECAB 202 (1984).

[22] *See* A.M.A., *Guides*, Chapter 9.1c, p. 228.

[23] *John T. Bradley*, 25 ECAB 348 (1974).

October 1996 tinnitus has not been shown to be causally related to his employment, no compensation for loss of wage-earning capacity can be paid. Further, there is no indication in the record that appellant sustained a loss of wage-earning capacity either pre- or post-October 1996 as a result of his tinnitus.

Since appellant has not demonstrated that his pre-1996 tinnitus caused or contributed to a ratable hearing loss and since appellant has not established that his post-1996 tinnitus and his vestibular function disturbances are causally related to factors of his employment, there is no basis for paying appellant a schedule award for tinnitus.

The Board further finds that the Office did not abuse its discretion by denying appellant's request for an oral hearing under 5 U.S.C. § 8124(b)(1).

Section 8124(b)(1) of the Act provides in pertinent part as follows:

> "Before review under § 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[24]

The Office's procedures implementing this section of the Act are found in the Code of Federal regulations at 20 C.F.R. § 10.131(a). This paragraph, which concerns the preliminary review of a case by an Office hearing representative to determine whether the hearing request is timely and whether the case is in posture for a hearing states in pertinent part as follows:

> "A claimant is not entitled to an oral hearing if the request is not made within 30 days of the date of issuance of the decision as determined by the postmark of the request or if a request for reconsideration of the decision is made pursuant to 5 U.S.C. § 8128(a) and § 10.138(b) of this subpart prior to requesting a hearing or if review of the written record as provided by paragraph (b) of the section has been obtained."[25]

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[26] Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right for a hearing,[27] when the request is made after the 30-day period for requesting a hearing[28] and when

[24] 5 U.S.C. § 8124(b)(1).

[25] 20 C.F.R. § 10.131(a).

[26] *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

[27] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[28] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

the request is for a second hearing on the same issue.[29] In these instances the Office will determine whether a discretionary hearing should be granted of, if not, will so advise the claimant with reasons.[30] The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.[31]

In the present case, the Office issued its most recent merit decision terminating appellant's compensation on September 11, 1998. He requested a hearing in a letter dated October 20, 1998. A hearing request must be made within 30 days of the issuance of the decision as determined by the postmark of the request.[32] Since appellant did not request a hearing within 30 days of the Office's September 11, 1998 decision, he was not entitled to a hearing under section 8124 as a matter of right.

The Office, in its discretion, considered appellant's hearing request in its November 18, 1998 decision and denied the request on the basis that appellant could pursue his claim by requesting reconsideration by the Office and submitting additional evidence supporting that the hearing loss in his right ear was causally related to factors of his federal employment.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deductions from known facts.[33] There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated November 18 and September 11, 1998 are hereby affirmed.

Dated, Washington, D.C.
June 2, 2000

David S. Gerson
Member

[29] *Johnny S. Henderson*, *supra* note 26.

[30] *Id.*; *Rudolph Bermann, supra* note 27.

[31] *See Herbert C. Holley, supra* note 28.

[32] 20 C.F.R. § 10.131(a).

[33] *Daniel J. Perea*, 42 ECAB 214 (1990).

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member