

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON THOMAS and DEPARTMENT OF THE ARMY,
DIRECTORATE OF PUBLIC WORKS, Fort Rucker, AL

*Docket No. 00-671; Submitted on the Record;
Issued January 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On September 2, 1998 appellant, a 46-year-old equipment operator, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that he sustained bilateral hearing loss as a result of his employment exposure. Appellant indicated that he first became aware of his condition on April 30, 1981 and that he subsequently realized on August 27, 1998 that his hearing loss was caused or aggravated by his employment. His claim was accompanied by a series of audiograms administered by the employing establishment during the period April 1980 through August 1998.

By letter dated October 7, 1998, the Office of Workers' Compensation Programs requested additional factual information from both appellant and the employing establishment. Appellant was requested, *inter alia*, to provide information regarding his employment history, military service and nonoccupational exposure to noise. The Office also requested that appellant provide medical documentation pertaining to any prior treatment he may have received for ear or hearing problems. In response, appellant submitted additional medical documentation and a 1979 federal employment application that noted, among other things, appellant's military service from May 1973 to May 1976. The employing establishment, however, did not respond to the Office's request for information.

By decision dated February 22, 1999, the Office denied appellant's claim based on his failure to establish fact of injury. The Office specifically noted that appellant failed to provide the requested factual information regarding his employment history and noise exposure.

Appellant subsequently requested reconsideration on April 23, 1999. His request was accompanied by several duplicate audiograms, a copy of his position description and a March 10, 1999 report from an employing establishment audiologist.

In a merit decision dated June 2, 1999, the Office denied modification. The Office again noted that appellant failed to provide the necessary factual information requested in its initial development letter of October 7, 1998.

The Board has duly reviewed the case record on appeal and finds that the case is not in posture for a decision.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that such event, incident or exposure caused an injury.¹ Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.²

The Board finds that appellant was exposed to hazardous noise levels while performing his duties as a heavy equipment operator.

The position description submitted by appellant indicates that he was potentially “subject to injury from ... noise.” Additionally, the employing establishment’s audiologist reported that appellant had been a heavy equipment operator for the “past 20 years and has had noise levels of 82 to 85 dBA [decibels].”³ The audiologist also reported that appellant had participated in the employing establishment’s hearing conservation program, which required him to wear hearing protection at work.⁴ Lastly, the audiologist noted that based on an August 6, 1998 audiogram, appellant showed a moderate to severe, bilateral high frequency hearing loss.

The Office dismissed the audiologist’s March 10, 1999 report, inasmuch as she was not a physician, as that term is defined under the Federal Employees’ Compensation Act.⁵ While the employing establishment’s audiologist is not considered a “physician” under the Act, this limitation imposed by the Act does not render her incapable of providing factual information regarding appellant’s occupational exposure. Furthermore, the employing establishment does not appear to dispute the accuracy of the information provided by its audiologist.

Although appellant may not have provided specific responses to the Office’s October 7, 1998 request for additional information, most, if not all, of the requested information can be

¹ See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (“occupational disease or illness” and “traumatic injury” defined).

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ The exposure levels were reportedly obtained from a 1994 report by industrial hygiene that included noise dosimetry measures.

⁴ Appellant also indicated in his April 23, 1999 request for reconsideration that he used “small triple flange ear plugs and ear muffs while operating the equipment.”

⁵ Audiologist is not included among the list of healthcare professionals recognized as a “physician” under the Act. 5 U.S.C. § 8101(2).

gleaned from the record. In addition to the information provided by the employing establishment's audiologist, the record includes information regarding appellant's military service as well as the fact of his continued exposure to employment conditions allegedly responsible for his claimed hearing loss.⁶

Based on the evidence of record, the Board finds that appellant was exposed to occupational noise levels of 82 to 85 dBA for a period of approximately 20 years. The question remains as to whether appellant's occupational exposure caused an injury. In the instant case, while the employing establishment's audiologist diagnosed moderate to severe, bilateral high frequency hearing loss, the record does not include a physician's opinion diagnosing a hearing loss.

Proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant sustained a hearing loss causally related to the accepted employment exposure. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

⁶ This latter information is clearly set forth on appellant's Form CA-2.

⁷ *William J. Cantrell*, 34 ECAB 1223 (1983).

The June 2, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
January 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member