

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM R. WILLINGHAM and DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Savannah, GA

*Docket No. 03-1294; Submitted on the Record;
Issued November 26, 2003*

DECISION and ORDER

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

The issue is whether appellant's hearing loss is causally related to factors of his federal employment.

On November 5, 2002 appellant, then a former federal geologist, filed a claim alleging hearing loss caused by exposure to hazardous noise levels in the course of his federal employment. Appellant stated that he was first aware of his condition and that it was caused by his employment in 1995. He also noted in his attached narrative that he was first aware of his condition in 1997 or 1998 when his wife advised him of his hearing loss. Appellant has not been exposed to hazardous noise levels since 1995.

The record included intermittent audiograms from 1967 to 1996 revealing bilateral hearing loss fluctuations during that time frame with a loss greater in the right ear and appellant's employment history from 1966 to 2002. The record includes an October 22, 2002 report of his annual and termination physical examination which notes that he had failed his hearing test and was advised to return for a repeat examination. The employing establishment noted that decibel readings for equipment noise to which appellant could have been exposed from 1995 to 2002 ranged from 73 to 110 decibels.

On March 12, 2003 the Office referred appellant, a statement of accepted facts and a copy of his medical record to Dr. Robert Eugene Johnson, a Board-certified otolaryngologist, for a second opinion evaluation. In the statement of accepted facts, the Office noted that, from 1975 to 1977, appellant worked behind a drill rig and around heavy rod building equipment, and from 1975 to 1995, he worked about 15 to 20 percent of his time sawing rock cores and slabs in preparation for rock quality tests as well as cutting and grinding rock samples. Ear plugs were worn during his noise exposure. The Office asked Dr. Johnson to determine if appellant's hearing loss was due to factors of his federal employment.

On an April 2, 2003 Form CA-1332, Dr. Johnson stated that in comparison to appellant's hearing at the beginning of his noise exposure in 1981, he had sustained moderate high

frequency sensorineural hearing loss. He also found that workplace exposure was sufficient as to intensity and duration to have caused his hearing loss. However, Dr. Johnson checked a box “no” indicating that appellant’s hearing loss was not based on his work history, and thus was not work related.

By decision dated April 9, 2003, the Office denied appellant’s claim, finding that the evidence of record was insufficient to establish a causal relationship between his hearing loss and factors of his employment.

The Board finds that the case is not in posture for decision.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act; that the claim was filed within the applicable time limitation of the Act; that an injury was sustained while 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 These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In his April 2, 2003 form report, Dr. Johnson presents internally inconsistent findings. In that report, Dr. Johnson stated that appellant’s hearing was normal on March 6, 1981, and that his subsequent moderate high frequency sensineural hearing loss, sustained during his federal employment, was in excess of the normal expected loss. He also noted that appellant’s workplace exposure was sufficient in intensity and duration to have caused his hearing loss. However, Dr. Johnson then checked a box indicating that appellant’s hearing loss was not due to noise exposure based on his federal employment as he provided in his work history.

Consequently, this case must be remanded for a supplemental report from Dr. Johnson asking him to explain the contradiction in his statements that appellant’s workplace exposure was sufficient in intensity and duration to have caused his hearing loss and his checking a box in an Office medical form indicating that his hearing loss was not due to noise exposure encountered in his federal employment. If the Office is not able to obtain a supplemental report from Dr. Johnson, the Office shall refer appellant to another physician for evaluation. After such further development as necessary, the Office shall issue a *de novo* decision.

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Rebecca LeMaster*, 50 ECAB 254 (1999).

The April 9, 2003 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this decision.

Dated, Washington, DC
November 26, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member