

On March 24, 2003 appellant, a 61-year-old heavy equipment mechanic, filed an occupational disease claim (Form CA-2), alleging that he sustained hearing loss in both ears due to exposure to noise in the course of his federal employment. He first became aware that he had a hearing loss and related it to his employment in 1999. In a March 17, 2003 statement, the employing establishment indicated that until 1999 appellant did have potential for some

significant noise exposure, but his exposure since 1999 was negligible. The employing establishment noted that appellant wore hearing protection since 1985 whenever it was required.

In a report dated December 23, 2002, Dr. Blane E. Bateman, an attending Board-certified osteopathic ear, nose and throat physician, noted appellant's drop in his hearing during the period 2000 to 2001. The physician attributed the loss to appellant's working in an area where "there are noisy air wrenches" and that while appellant wore hearing protection that his "hearing has continued to decrease at an alarming rate." Regarding the cause of appellant's hearing loss, Dr. Bateman opined that appellant's "noisy environment is probably to blame for the changes."

The Office referred appellant, together with the case record and a statement of accepted facts, to Dr. Howard Loveless, Jr., a Board-certified otolaryngologist, for an examination and evaluation of the medical records. In an undated report (Form CA-1332) received by the Office on May 29, 2003, Dr. Loveless diagnosed a sensorineural hearing loss and checked a box that appellant's hearing loss was "not due" to noise exposure in his federal employment. In response to a question as to whether the workplace exposure was sufficient in intensity and duration to have caused the hearing loss, Dr. Loveless stated, "not if adequate hearing protection was worn regularly." In support of this conclusion that the hearing loss was nonemployment related, Dr. Loveless stated:

"The loss [and] patterns can be consistent with presbycusis. The hearing between 1981 and 2000 really did not change. Most of his hearing loss has occurred since 2000, when he was 58 years old."

Dr. Loveless reported that the May 20, 2003 audiogram, which showed mild to moderate sensorineural hearing loss was "within the range that could be attributed to presbycusis."

By decision dated September 9, 2003, the Office found that the medical evidence established that appellant's hearing loss was not caused by his federal employment.

### **LEGAL PRECEDENT**

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by his federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of his federal employment.<sup>1</sup> Causal relationship is a medical issue that can be established only by medical evidence.<sup>2</sup> The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.<sup>3</sup>

---

<sup>1</sup> *Virginia Richard (Lionel F. Richard)* 53 ECAB \_\_\_\_ (Docket No. 01-107, issued March 8, 2002); *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>2</sup> *Donna L. Mims*, 53 ECAB \_\_\_\_ (Docket No. 01-1835, issued August 13, 2002).

<sup>3</sup> *Alice F. Harrell*, 53 ECAB \_\_\_\_ (Docket No. 01-1249, issued August 1, 2002).

In order to establish an employment-related hearing loss, the Board requires that the employee undergo both audiometric and otologic examination; that the audiometric testing precede the otologic examination; that the audiometric testing be performed by an appropriately certified audiologist; that the otologic examination be performed by an otolaryngologist certified or eligible for certification by the American Academy of Otolaryngology; that the audiometric and otologic examination be performed by different individuals as a method of evaluating the reliability of the findings; that all audiological equipment authorized for testing meet the calibration protocol contained in the accreditation manual of the American Speech and Hearing Association; that the audiometric test results included both bone conduction and pure tone air conduction thresholds, speech reception thresholds and monaural discrimination scores; and that the otolaryngologist report must include: date and hour of examination, date and hour of the employee's last exposure to loud noise, a rationalized medical opinion regarding the relation of the hearing loss to the employment-related noise exposure and a statement of the reliability of the tests.<sup>4</sup> The physician should be instructed to conduct additional tests or retests in those cases where the initial tests were inadequate or there is reason to believe the claimant is malingering.<sup>5</sup>

### ANALYSIS

The Board finds that there is a conflict in medical opinion between the Dr. Loveless, an Office referral Board-certified otolaryngologist, and Dr. Bateman, appellant's attending osteopathic Board-certified ear, nose and throat physician. In his report dated December 23, 2002, Dr. Bateman opined that appellant's significant hearing loss was caused by workplace noise exposure. By contrast, Dr. Loveless found that the hearing loss was due to presbycusis and was not work related.

Section 8123 of the Federal Employees' Compensation Act<sup>6</sup> provides that if there is a disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>7</sup>

In view of the conflict in medical evidence, appellant and the case record should be examined by a Board-certified impartial medical specialist, who should be requested to submit a rationalized report regarding whether appellant's hearing loss is employment related. The Office should then develop the evidence as it deems necessary and issue an appropriate decision.

---

<sup>4</sup> *Raymond H. VanNett*, 44 ECAB 480, 482-83 (1993). See also Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a) (September 1994).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.8(a)(3) (September 1994).

<sup>6</sup> 5 U.S.C. § 8123(a).

<sup>7</sup> *Brenda C. McQuiston*, 54 ECAB \_\_\_\_ (Docket No. 03-1725, issued September 22, 2003); *Shirley L. Steib*, 46 ECAB 39 (1994).

**CONCLUSION**

The Board finds that this case is not in posture for a decision due to a conflict in the medical opinion evidence as to whether appellant's hearing loss is employment related.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 9, 2003 is set aside and the case remanded for further development consistent with the above opinion.

Issued: February 24, 2004  
Washington, DC

Alec J. Koromilas  
Chairman

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member