United States Department of Labor
Employees' Compensation Appeals Board

DENNIS Y. ROPER, Appellant	)	
and	)	**Docket No. 04-812**
	)	**Issued: August 23, 2004**
DEPARTMENT OF THE AIR FORCE, HILL AIR FORCE BASE, UT, Employer	)	

Appearances:
Dennis Y. Roper, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member

JURISDICTION

On February 9, 2004 appellant filed a timely appeal from a November 3, 2003 merit decision of the Office of Workers' Compensation Programs denying his claim that he sustained hearing loss due to factors of his federal employment. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an employment-related loss of hearing.

FACTUAL HISTORY

On June 24, 2003 appellant, then a 55-year-old aircraft mechanic supervisor, filed an occupational disease claim for hearing loss causally related to factors of his federal employment. Appellant related that he was exposed to "extreme sheet metal noise while working on the F-4

aircraft." He stated that he was also exposed to noise from the flight testing of aircraft.[1] Appellant's supervisor indicated that he initially reported his condition on October 5, 1980 and that his date of last exposure at work was July 2, 2003.

In a letter dated July 8, 2003, the Office requested that appellant provide additional factual information, including a description of his employment history, noise exposure, any prior ear or hearing problems and any hobbies involving loud noise exposure. In another letter of the same date, the Office requested additional factual information from the employing establishment, including the decibel levels to which appellant was exposed at work, the dates and locations of his exposure to noise, the periods of exposure and whether hearing protection was provided.

In July and October 2003, the Office received additional factual and medical evidence. It is unclear from the record who submitted the additional evidence received by the Office in July and October 2003. The Office received audiograms dated 1974 to 2002 and clinic notes from the employing establishment dated 1976 to 2001.[2] In a clinic note dated October 6, 1976, Dr. Leo W. Benson, who specializes in occupational medicine, recommended that appellant be removed from hazardous noise for 30 days. In a hearing conservation form dated 1972, a nurse noted that appellant was exposed to noise in the hanger shop.

The record also contains an October 18, 2001 audiological evaluation performed on appellant by Lawrence D. Barnum. He noted that appellant had a 35-year history of noise exposure as an aircraft mechanic. He indicated findings of tinnitus and sensorineural hearing loss and found that appellant could return to work without restrictions.

A position description indicates that appellant worked in conditions "[s]ubject to shop fumes and noise."

By decision dated November 3, 2003, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury as alleged. The Office noted that it had informed appellant of the evidence required to establish his claim but he had not provided a detailed statement regarding his noise exposure and the reason he believed that it was due to his federal employment.

[1] Appellant noted that he was advised by the employing establishment to wait until retirement before filing his claim.

[2] The record also contains a form signed by appellant in the 1970s in which he agreed to wear hearing protection.

LEGAL PRECEDENT

Proceedings under the Federal Employees' Compensation Act[3] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish his or her claim, the Office also has a responsibility in the development of the evidence.[4] This is particularly true when the evidence is of the character normally obtained from the employing establishment or other government source.[5]

Title 20 C.F.R. § 10.118(a) states: "The employer is responsible for submitting to [the Office] all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time."

ANALYSIS

The Office denied appellant's claim that he sustained an employment-related hearing loss on the grounds that he had not submitted evidence regarding noise exposure in the course of his federal employment. However, the record contains a position description indicating that appellant was exposed to "shop fumes and noise" as well as audiograms dated 1974 and 2002 and clinic notes from the employing establishment dated 1976 to 2001. The record further contains a hearing conservation form from a nurse dated 1974 who noted that he was exposed to noise in the hanger shop. In an audiological evaluation dated October 18, 2001, Mr. Barnum described appellant's 35-year history of noise exposure. On his claim form, appellant attributed his hearing loss to noise from sheet metal while working on aircraft and noise from flight tests.

As noted above, the Office shares responsibility in the development of the factual evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.[6] In this case, the Office requested further factual information from the employing establishment, including appellant's employment history, the dates and periods of his noise exposure, the specific decibel levels to which he was exposed and whether ear protection was provided. Under Office regulations, the employing establishment is responsible for submitting all relevant and probative evidence in its possession.[7] However, the record does not contain any documents, such as noise level surveys, from the employing establishment detailing appellant's exposure to noise at work, nor is there evidence in the record that the Office made a second attempt to obtain this relevant information.

Once the Office undertakes development of the record, it has the responsibility to do so in a proper manner.[8] In this case, the Office did not properly develop the factual record regarding

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Claudia A. Dixon*, 47 ECAB 168 (1995).

[5] *Willie A. Dean*, 40 ECAB 1208 (1989); *Ruth A. Hussey (Nee Ellerman)*, 9 ECAB 292 (1957).

[6] *Id*.

[7] 20 C.F.R. § 10.118(a).

[8] *Henry G. Flores*, 43 ECAB 901 (1992).

appellant's noise exposure during the course of his federal employment as the employing establishment failed to comply with the Office's request for specific factual information. The Board, therefore, will remand the case to the Office to make a second attempt to obtain the relevant information from the employing establishment, to be followed by a *de novo* decision on the merits of appellant's claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 3, 2003 is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: August 23, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member