

**United States Department of Labor
Employees' Compensation Appeals Board**

BRUCE GREGORY FARMAN, Appellant

and

**DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD,
Bremerton, WA, Employer**

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**Docket No. 04-291
Issued: March 23, 2004**

Appearances:
Bruce Gregory Farman, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On November 13, 2003 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs dated July 14, 2003. Under 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 established that his hearing loss was caused by factors of his federal employment.

FACTUAL HISTORY

On August 15, 2002 appellant, then a 55-year-old project superintendent, filed a notice of occupational disease alleging that his hearing loss was caused by factors of his federal employment. He stated that he was aware initially of his hearing loss and that it was caused by factors of his federal employment on August 12, 2002. Appellant stated that he had been exposed to hazardous noise for the past 35 years while he worked in the shipyard in a production

shop and on surface craft, aircraft carriers and submarines as a production worker and a supervisor. He had noticed a decline in his hearing over the last 10 years, but added that his previous medical examinations were within normal limits. However, the doctor, who administered his last examination on August 12, 2002, advised that his hearing had deteriorated over the last 35 years.

The employing establishment submitted audiogram testing results from April 8, 1983 to August 12, 2002. On November 1, 2002 the Office requested additional information from the employing establishment. In a report dated February 23, 2003, the employing establishment stated that appellant was exposed to 84 decibels daily in the workplace from 1976 to 2002.

On March 24, 2003 the Office referred appellant, a statement of accepted facts, a copy of the medical record and specific questions to Dr. Joseph Fares, a Board-certified otolaryngologist, for a second opinion evaluation. In a report dated June 4, 2003, Dr. Fares stated that he examined appellant on March 31, 2003 and, based on a hearing test, appellant had moderate to severe sensorineural hearing loss and a bilateral impairment of 19.4 percent based on the Florida Impairment Rating Guide. The record includes a medical history taken by Dr. Fares dated April 10, 2003 and hearing tests including an audiogram taken on April 9, 2003.

On May 22, 2003 the Office referred appellant to Dr. J. Douglas Green, another second opinion physician, who is also a Board-certified otolaryngologist, and included a copy of his medical record, a statement of accepted facts and a list of questions for an evaluation regarding appellant's hearing loss. On June 18, 2003 the employing establishment submitted additional audiogram test results from 1967 to 1981. In a June 3, 2003 report, Dr. Green stated that appellant had normal hearing in 1967 when he began his employment with the employing establishment, but that the June 3, 2002 audiometric data could not be compared to his initial evaluation data because the June 3, 2003 pure tone audiometry (PTA) levels and speech reception threshold (SRT) levels did not agree and the bone conduction levels were "poorer" than the air conduction levels. On the Office's form report, Dr. Green diagnosed probable sensorineural loss with embellishment and advised that he was unable to say whether it was employment related. He also recommended additional testing including Auditory Brainstem Response (ABR) testing and otoacoustic emissions testing.

By decision dated July 14, 2003, the Office denied appellant's claim for a work-related hearing loss on the grounds that the medical evidence from Drs. Fares and Green failed to establish that his hearing loss was attributable to his employment.

LEGAL PRECEDENT

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In order to establish an employment-related hearing loss, the Office requires that the employee undergo both audiometric and otologic examinations; 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.² 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.³

ANALYSIS

The Board finds that Dr. Fares' report is of no probative value because he failed to identify when the hearing test was conducted, what kind of hearing test it was and whether it was performed in accordance with standards established by the Office. His report therefore does not conform with Office procedures.⁴ Further, he provided no opinion regarding whether appellant's hearing loss was employment related and medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.⁵

Further, Dr. Green stated that he was unable to determine whether appellant's sensorineural hearing loss was attributable to his employment because appellant's PTA and SRT levels did not agree and that the bone conduction levels were poorer than the air conduction levels. Dr. Green also recommended additional testing such as ABR and otoacoustic testing. As stated above, Office procedures provide that, in cases as here where initial tests are inadequate or

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² *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).

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

⁴ See *supra* note 2.

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

there is reason to believe the claimant is malingering, the physician will be instructed to conduct additional tests or retests.⁶ However, the Office failed to authorize these tests that Dr. Green specifically requested. The case will therefore be vacated and remanded to the Office. On remand, the Office shall further develop the evidence as necessary by ensuring that the ABR test and otoacoustic testing be performed by Dr. Green for a determination as to whether appellant's hearing loss was caused by factors of his federal employment. Following such further development, the Office should issue a *de novo* decision regarding appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision as the Office improperly determined that appellant had no work-related hearing loss because it failed to provide additional testing as authorized by Office procedures and as requested by Dr. Green.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 14, 2003 be set aside and the case record remanded to the Office for proceedings consistent with this opinion.

Issued: March 23, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁶ *Supra* note 3.