

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

---

**CHARLES ADLER, Appellant**

**and**

**DEPARTMENT OF THE AIR FORCE, UTAH  
NATIONAL GUARD, Draper, UT, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 05-1552  
Issued: February 3, 2006**

*Appearances:*  
*Charles Adler, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 18, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 15, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met his burden of proof in establishing that he had any disability subsequent to March 22, 1980 causally related to his accepted binaural hearing loss.

**FACTUAL HISTORY**

This is the second appeal in the present case. In a March 24, 2003 decision, the Board set aside a September 14, 2001 Office decision. The Board found that appellant was entitled to a schedule award for a 41 percent binaural hearing loss and remanded the case for payment of a

schedule award consistent with the decision.<sup>1</sup> The facts and the circumstances of the case up to that point are set forth in the Board's prior decision and incorporated herein by reference.<sup>2</sup>

In a decision dated April 12, 2003, the Office granted appellant a schedule award for a 41 percent binaural hearing loss for a total award of \$26,902.70. The period of the award was from March 9, 1999 to August 9, 2000. In a letter dated August 20, 2003, appellant requested that the Office review the schedule award determination because he believed that there was an error in calculation. By decision dated September 2, 2003, the Office determined that the August 12, 2003 schedule award was incorrect as a 41 percent impairment of binaural hearing would entitle appellant to \$29,730.74 for the period March 9, 1999 to August 9, 2000.

On October 27, 2003 appellant filed a Form CA-7, claim for compensation, for the period March 22, 1980 to the present. In a letter dated July 25, 2004, appellant requested a status on his claim. Also attached was an employee service statement which indicated that appellant's service ended on March 22, 1980.

In a letter dated September 10, 2004, the Office informed appellant that he was owed an additional amount under the schedule award granted on September 2, 2003. The Office indicated that it erroneously deducted benefits received from the Veterans Administration for the period March 9, 1999 to May 31, 2001 instead of March 9, 1999 to August 9, 2000, and appellant was owed \$940.90. The Office further advised that, upon review of appellant's CA-7 form filed on October 27, 2003, the information was insufficient to support that he was disabled from work on or after March 22, 1980 due to his accepted hearing loss and requested that he submit additional information in support of his claim.

In a letter dated September 28, 2004, appellant submitted a hearing profile dated March 22, 2001 which set forth criteria for qualifying applicants for flying classes. Appellant noted that he had hearing loss sufficient to preclude safe and effective performance of duty. By letter dated October 6, 2004, appellant noted that his audiograms proved that he was incapable of performing his regularly-assigned duties prior to March 22, 1980 and submitted audiograms dated 1959 to 1980 which showed progressive hearing loss. In a Form AF-1042, medical recommendation for flying, dated January 12, 1979, Colonel James Freston advised that appellant was physically capable for flying duty based on his annual medical examination. Appellant submitted a letter from an audiologist, Randy Bishop, dated November 7, 2000, who noted audiograms from 1959 to 1980, supported compensable service-connected hearing loss for which the Veterans Administration granted compensation and two hearing aids. He advised that appellant worked 20 years with the Air National Guard, on noninsulated cargo planes where he was a load master and wore a circumaural radio headset and was exposed to noise levels which exceeded Occupational Safety and Health Administration (OSHA) standards and most likely caused his degree of noise-induced hearing loss.

---

<sup>1</sup> Docket No. 02-1370 (issued March 24, 2003).

<sup>2</sup> The record reveals that appellant resigned from federal employment effective March 22, 1980 to pursue other interests, but continued to fly as a national guardsman until October 1980. Appellant's claim was accepted for binaural hearing loss.

Appellant submitted statements dated January 21 to May 24, 2005 requesting the status of his disability claim. He contended that he provided evidence that established that he was disqualified from the position he was hired to perform prior to his resignation. Appellant further noted that the medical recommendation for flying prepared by Colonel Freston, which advised that appellant was physically capable of flying, was inaccurate.

In a decision dated June 15, 2005, the Office denied appellant's claim for disability wage loss for the period on and after March 22, 1980.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by a preponderance of the evidence that he or she is disabled for work as a result of an accepted employment injury and submit medical evidence for each period of disability claimed.<sup>3</sup> Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues.<sup>4</sup> The issue of whether a particular injury causes disability for work must be resolved by competent medical evidence.<sup>5</sup>

### **ANALYSIS**

The Office accepted appellant's claim for binaural hearing loss. However, the medical evidence submitted in support of the wage-loss compensation claim for disability for the period beginning March 22, 1980 is insufficient to establish that appellant was disabled by the accepted employment injury.

Accompanying appellant's claim were audiograms dated 1959 to 1980 which showed progressive hearing loss. However, such reports are not considered medical evidence as an audiologist is not considered a physician under the Act.<sup>6</sup> Consequently, these records are insufficient to establish any work-related disability. These reports, moreover, do not address the relevant issue of appellant's disability for work.

Other evidence submitted includes a Form AF-1042, medical recommendation for flying, dated January 12, 1979, in which Colonel Freston did not support appellant's total disability due to the binaural hearing loss. Rather, he advised that appellant was physically capable for flying duty based on appellant's annual medical examination.

---

<sup>3</sup> See *Fereidoon Kharabi*, 52 ECAB 291 (2001).

<sup>4</sup> *Id.*

<sup>5</sup> See *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>6</sup> See 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

Also submitted was a letter from an audiologist, Mr. Bishop, dated November 7, 2000, who noted that audiograms from 1959 to 1980, supported compensable service-connected hearing loss for which the Veterans Administration granted compensation and two hearing aids. However, as noted above, such reports are not considered probative medical evidence as an audiologist is not a physician as defined under the Act.<sup>7</sup> Therefore, these reports are insufficient to meet appellant's burden of proof to establish through competent medical evidence that his claimed disability was due to his accepted employment injury.

The hearing profile dated March 22, 2001, which set forth criteria for qualifying applicants for flying classes, failed to provide a specific opinion on causal relationship between the claimed period of disability and the accepted employment injury. There is no reasoned medical evidence from a physician addressing the issue of appellant's disability for work beginning March 22, 1980, when he resigned from the employing establishment.<sup>8</sup> Consequently, the medical evidence does not establish that the claimed period of disability is due to appellant's accepted employment-related binaural hearing loss.

### **CONCLUSION**

The Board finds that appellant has failed to establish that appellant's condition during the claimed period of disability is causally related to the accepted hearing loss claim.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 15, 2005 is affirmed.

Issued: February 3, 2006  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>7</sup> See *supra* note 6.

<sup>8</sup> See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).